This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

SEP 2 01913

634245

United States. Senate

THE

ANSWER AND PLEAS

OF

SAMUEL CHASE,

ONE OF THE ASSOCIATE JUSTICES

OF THE

SUPREME COURT OF THE UNITED STATES,

TO THE

ARTICLES OF IMPEACHMENT,

EXHIBITED AGAINST HIM

IN THE SENATE,

BY THE HOUSE OF REPRESENTATIVES

OF THE

United States,

IN SUPPORT OF THEIR IMPEACHMENT AGAINST HIM, FOR HIGH CRIMES AND MISDEMEANORS, SUPPOSED TO HAVE BEEN BY HIM COMMITTED.

NEWBURYPORT:
PUBLISHED BY ANGIER MARCH.
1805.

NEW YORK PUBLIC LIBRARY

THE NEW YORK
PUBLIC LIBRARY
634245
ASTOR, LENOX AND
TILDEN FOUNDATIONS.
R 1913 L

IN THE

SENATE OF THE UNITED STATES,

SITTING AS A

HIGH COURT OF IMPEACHMENT,

ON THE

Fourth Day of February, A. D. 1805.

THE UNITED STATES, *vs.* SAMUEL CHASE.

THE anſwer and pleas of SAMUEL CHASE, one of the Aſſociate Juſtices of the Supreme Court of the United States, to the Articles of Impeachment exhibited againſt him in the ſaid Court, by the Honourable the Houſe of Repreſentatives of the United States, in ſupport of their impeachment againſt him, for high crimes and miſdemeanors, ſuppoſed to have been by him committed.

THIS reſpondent, in his proper perſon, comes into the ſaid court, and proteſting that there is no high crime or miſdemeanor particularly alledged in the ſaid articles of impeachment, to which he is or can be bound by law to make anſwer; and ſaving to himſelf now, and at all times hereafter, all benefit of exception to the inſufficiency of the ſaid articles, and each of them, and to the defects therein appearing in point of law, or otherwiſe; and proteſting alſo, that he ought not to be injured in any manner, by any words, or by any want of form in his his anſwer; he ſubmits the following facts and obſervations by way of anſwer to the ſaid articles.

The firſt article relates to his ſuppoſed miſconduct in the trial of John Fries, for treaſon, before the circuit court of the United States, at Philadelphia, in April and , 1800; and alledges that he preſided at that trial, at, "unmindful of the ſolemn duties of his office, ntrary to the ſacred obligation by which he ſtood bound

bound to diſcharge them, faithfully and impartially, and without reſpect to perſons," he did then, "in his judicial capacity, conduct himſelf in a manner highly arbitrary, oppreſſive, and unjuſt."

This general accuſation, too vague in itſelf for reply, is ſupported by three ſpecific charges of miſconduct:

1ſt. "In delivering an opinion, in writing, on the queſtion of law, on the conſtruction of which the defence of the accuſed materially depended:" which opinion, it is alledged, tended "to prejudice the minds of the jury againſt the caſe of the ſaid John Fries, the priſoner, before counſel had been heard in his favor."

2d. "In reſtricting the counſel for the ſaid John Fries, from recurring to ſuch Engliſh authorities, as they believed appoſite; or from citing certain ſtatutes of the United States, which they deemed illuſtrative of the poſitions, upon which they intended to reſt the defence of their client."

3d. "In debarring the priſoner from his conſtitutional privilege of addreſſing the jury (through his counſel) on the law, as well as on the fact, which was to determine his guilt, or innocence, and at the ſame time endeavouring to wreſt from the jury their indiſputable right to hear argument, and determine upon the queſtion of law, as well as the queſtion of fact, involved in the verdict which they were required to give."

This firſt article then concludes, that in conſequence of this irregular conduct of this reſpondent, "the ſaid John Fries was deprived of the right ſecured to him by the *eighth* article, amendatory of the conſtitution; and was condemned to death, without having been heard, by counſel, in his defence."

By the eighth article amendatory to the conſtitution, this reſpondent ſuppoſes, is meant the *ſixth* amendment to the conſtitution of the United States; which ſecures to the accuſed, in all criminal proſecutions, the right to have the aſſiſtance of counſel for his defence.

In anſwer to theſe three charges, the reſpondent admits that the circuit court of the United States, for the diſtrict of Pennſylvania, was held at Philadelphia, in that diſtrict,

diſtrict, in the months of April and May, in the year of our Lord, 1800; at which court John Fries, the perſon named in the ſaid firſt article, was brought to trial, on an indictment for treaſon againſt the United States; and that this reſpondent then held a commiſſion, as one of the aſſociate juſtices of the ſupreme court of the United States; by virtue of which office, he did, purſuant to the laws of the United States, preſide at the above mentioned trial, and was aſſiſted therein by Richard Peters, Eſq. then, and ſtill, diſtrict judge of the United States, for the diſtrict of Pennſylvania; who, as directed by the laws of the United States, ſat as aſſiſtant judge at the ſaid trial.

With reſpect to the opinion, which is alledged to have been delivered by this reſpondent, at the above-mentioned trial, he begs leave to lay before this honorable court the true ſtate of that tranſaction, and to call its attention to ſome facts, and conſiderations, by which his conduct on that ſubject will, he preſumes, be fully juſtified.

The conſtitution of the United States, in the third ſection of the third article, declares that "treaſon againſt the United States, ſhall conſiſt *only in levying war againſt them*, or in adhering to their enemies, giving them aid and comfort.

By two acts of Congreſs, the firſt paſſed on the third day of March, 1791, and the ſecond on the eighth day of May, 1792, a duty was impoſed on ſpirits diſtilled within the United States, and on ſtills; and various proviſions were made for its collection.

In the year 1794, an inſurrection took place in four of the weſtern counties of Pennſylvania, with a view of reſiſting and preventing by force the execution of theſe two ſtatutes; and at a circuit court of the United States, held at Philadelphia, for the diſtrict of Pennſylvania, in the month of April, in the year 1795, by William Patterſon, Eſq. then one of the aſſociate juſtices of the ſupreme court of the United States, and the above mentioned Richard Peters, then diſtrict judge of the United States, for the diſtrict of Pennſylvania, two perſons, who had been concerned in the above named inſurrection, namely,

namely, Philip Vigol and John Mitchel, were indicted for treaſon, of levying war againſt the United States, by reſiſting and preventing by force the execution of the two laſt mentioned acts of Congreſs; and were, after a full and very ſolemn trial, convicted on the indictments, and ſentenced to death. They were afterwards pardoned by George Waſhington, then Preſident of the United States.

In the firſt of theſe trials, that of Vigol, the defence of the priſoner was conducted by very able counſel, one of whom, William Lewis, Eſq. is the ſame perſon who appeared as counſel for John Fries, in the trial now under conſideration. Neither that learned gentleman, nor his able colleague, then thought proper to raiſe the queſtion of law, "whether reſiſting and preventing by armed force, the execution of a *particular* law of the United States, be a "levying of war againſt the United States," according to the true meaning of the conſtitution? although a deciſion of this queſtion in the negative, muſt have acquitted the priſoner. But in the next trial, that of Mitchel, this queſtion was raiſed on the part of the priſoner, and was very fully and ably diſcuſſed by his counſel; and it was ſolemnly determined by the court, both the judges concurring, "that to reſiſt or prevent by armed force, the execution of a particular law of the United States, is a levying of war againſt the United States, and conſequently is treaſon, within the true meaning of the conſtitution." The deciſion, according to the beſt eſtabliſhed principles of our juriſprudence, became a precedent for all courts of equal or inferior juriſdiction; a precedent which, although not abſolutely obligatory, ought to be viewed with very great reſpect, eſpecially by the court in which it was made, and ought never to be departed from, but on the fulleſt and cleareſt conviction of its incorrectneſs.

On the 9th of July, 1798, an act of Congreſs was paſſed, providing for a valuation of lands and dwelling-houſes, and an enumeration of ſlaves throughout the United States; and directing the appointment of commiſſioners and aſſeſſors for carrying it into execution: And on the 4th day of July, in the ſame year, a direct

tax

tax was laid by another act of Congreſs of that date, on the lands, dwelling-houſes, and ſlaves, ſo to be valued and enumerated.

In the months of February and March, A. D. 1799, an inſurrection took place in the counties of Bucks and Northampton, in the ſtate of Pennſylvania, for the purpoſe of reſiſting and preventing by force, the execution of the two laſt mentioned acts of Congreſs, and particularly that for the valuation of lands and dwelling-houſes. John Fries, the perſon mentioned in the article of impeachment now under conſideration, was apprehended and committed to priſon, as one of the ring-leaders of this inſurrection; and at a circuit court of the United States, held at Philadelphia, in and for the diſtrict of Pennſylvania, in the month of April, A. D. 1799, he was brought to trial for this offence, on an indictment for treaſon, by levying war againſt the United States, before James Iredell, Eſq. then one of the aſſociate juſtices of the ſupreme court of the United States, who preſided in the ſaid court, according to law, and the above mentioned Richard Peters, then diſtrict judge of the United States, for the diſtrict of Pennſylvania, who ſat in the ſaid circuit court as aſſiſtant judge.

In this trial, which was conducted with great ſolemnity, and occupied nine days, the priſoner was aſſiſted by William Lewis and Alexander James Dallas, Eſqs. two very able and eminent counſellors; the former of whom, William Lewis, is the perſon who aſſiſted as above mentioned, in conducting the defence of Vigol, on a ſimilar indictment. Theſe gentlemen, finding that the facts alledged were fully and undeniably proved, by a very minute and elaborate examination of witneſſes, thought proper to reſt the caſe of the priſoner on the queſtion of law which had been determined in the caſes of Vigol and Mitchel above mentioned, and had then been acquieſced in, but which they thought proper again to raiſe. They contended, "that to reſiſt by force of arms a particular law of the United States, does not amount to levying war againſt the United States, within the true meaning of the conſtitution, and therefore it is not *treaſon*, but a *riot* only." This queſtion they argued

ed at great length, and with all the force of their learning and genius; and after a very full diſcuſſion at the bar, and the moſt mature deliberation by the court, the learned and excellent judge who then preſided, and who was no leſs diſtinguiſhed by his humanity and tenderneſs towards perſons tried before him, than by his extenſive knowledge and great talents as a lawyer, pronounced the opinion of himſelf and his colleague, "that to reſiſt or prevent by force, the execution of a particular law of the United States, does amount to levying war againſt them, within the true meaning of the conſtitution, and does therefore conſtitute the crime of treaſon:" thereby adding the weight of another and more ſolemn deciſion, to the precedent which had been eſtabliſhed in the above mentioned caſes of Vigol and Mitchel.

Under this opinion of the court on the queſtion of law, the jury, having no doubt as to the facts, found the ſaid John Fries guilty of treaſon, on the above mentioned indictment. But a new trial was granted by the court, not by reaſon of any doubt as to the correctneſs of the deciſion on the queſtion of law, but ſolely on the ground, as this reſpondent hath underſtood and believes, that one of the jurors of the petit jury, after he was ſummoned, but before he was ſworn on the trial, had made ſome declaration unfavourable to the priſoner.

The yellow fever having appeared in Philadelphia in the ſummer of the year 1799, the above mentioned Richard Peters, then diſtrict judge of the United States for the diſtrict of Pennſylvania, did according to law appoint the next circuit court of that diſtrict, to be held at Norris Town therein: Purſuant to which appointment, a circuit court was held at Norris Town aforeſaid, in and for the ſaid diſtrict, on the 11th day of October in the laſt mentioned year, before Buſhrod Waſhington, Eſq. then one of the aſſociate juſtices of the ſupreme court of the United States, and the above mentioned Richard Peters; at which court no proceedings were had on the aforeſaid indictment againſt John Fries, becauſe, as this reſpondent hath been informed and believes, the commiſſion of the marſhal of the ſaid diſtrict

had

had expired, before he ſummoned the jurors to attend at the ſaid court, and had not been renewed; by reaſon of which no legal pannel of jurors could be formed.

On the 11th day of April, A. D. 1800, and from that day until the 2d day of May in the ſame year, a circuit court of the United States was held at Philadelphia, in and for the diſtrict of Pennſylvania, before this reſpondent, then one of the aſſociate juſtices of the ſupreme court of the United States, and the above mentioned Richard Peters, then diſtrict judge of the United States for the diſtrict of Pennſylvania. At this court, the indictment on which the ſaid John Fries had been convicted as above mentioned, was quaſhed ex officio by William Rawle, Eſq. then attorney of the United States for the diſtrict of Pennſylvania, and a new indictment was by him preferred againſt the ſaid John Fries, for treaſon of levying war againſt the United States, by reſiſting and preventing by force, in the manner above ſet forth, the execution of the above mentioned acts of Congreſs, for the valuation of lands and dwelling-houſes and the enumeration of ſlaves, and for levying and collecting a diſtrict tax. This indictment, of which a true copy, marked exhibit No. 1, is herewith exhibited by this reſpondent, who prays that it may be taken as part of this his anſwer, being found by the grand jury on the 16th day of April, 1800, the ſaid John Fries was on the ſame day arraigned thereon, and plead not guilty. William Lewis and Alexander James Dallas, Eſqrs. the ſame perſons who had conducted his defence at his former trial, were again at his requeſt aſſigned by the court as his counſel; and his trial was appointed to be had, on Tueſday the 22d day of the laſt mentioned month of April.

After this indictment was found by the grand jury, this reſpondent conſidered it with great care and deliberation, and finding, from the three overt acts of treaſon which it charged, that the queſtion of law ariſing upon it, was the ſame queſtion which had already been decided twice in the ſame court, on ſolemn argument and deliberation, and once in that very caſe, he conſidered the law as ſettled by thoſe deciſions, with the cor-

 rectneſs

rectneſs of which on full conſideration he was entirely ſatisfied; and by the authority of which he ſhould have deemed himſelf bound, even had he regarded the queſtion as doubtful in itſelf. They are moreover in perfect conformity with the uniform tenor of deciſions in the courts of England and Great Britain, from the revolution, in 1688, to the preſent time, which, in his opinion, added greatly to their weight and authority.

And ſurely he need not urge to this honorable court, the correctneſs, the importance, and the abſolute neceſſity of adhering to principles of law once eſtabliſhed, and of conſidering the law as finally ſettled, after repeated and ſolemn deciſions by courts of competent juriſdiction. A contrary principle would unſettle the baſis of our whole ſyſtem of juriſprudence, hitherto our ſafeguard and our boaſt; would reduce the law of the land, and ſubject the rights of the citizen, to the arbitrary will, the paſſions or the caprice of the judge in each particular caſe; and would ſubſtitute the varying opinions of various men, inſtead of that fixed, permanent rule, in which the very eſſence of law conſiſts. If this reſpondent erred in regarding this point as ſettled, by the repeated and ſolemn adjudications of his predeceſſors, in the ſame court and in the ſame caſe; if he erred in ſuppoſing that a principle eſtabliſhed by two ſolemn deciſions was obligatory upon him, ſitting in the ſame court where thoſe deciſions had been made; if he erred in believing that it would be the higheſt preſumption in him, to ſet up his opinion and judgment over that of his colleague, who had twice decided the ſame queſtion, and of two of his predeceſſors, who juſtly rank among the ableſt judges that have ever adorned a court; if in all this he erred, it is an error of which he cannot be aſhamed, and which he truſts will not be deemed criminal in the eyes of this honorable court, of his country, or of that poſterity by which he, his accuſers, and his judges, muſt one day be judged.

Under the influence of theſe conſiderations, this reſpondent drew up an opinion on the law, ariſing from the overt acts ſtated in the ſaid indictment, which was conformable to the deciſions before given as above mentioned,

mentioned, and which he ſent to his colleague the ſaid Richard Peters, for his conſideration. That gentleman returned it to this reſpondent, with ſome amendments affecting the form only, but not in any manner touching the ſubſtance.

The opinion thus agreed to, this reſpondent thought it proper to communicate to the priſoner's counſel. Several reaſons concurred in favor of this communication.

In the firſt place, this reſpondent conſidered himſelf and the court as bound by the authority of the former deciſions; eſpecially the laſt of them, which was on the ſame caſe. He conſidered the law as ſettled, and had every reaſon to believe that his colleague viewed it in the ſame light. It was not ſuggeſted or underſtood, that any new evidence was to be offered; and he knew that if any ſhould be offered, which could vary the caſe, it would render wholly inapplicable both the opinion and the former deciſions on which it was founded. And he could not and did not ſuppoſe, that the priſoner's counſel would be deſirous of waſting very precious time, in addreſſing to the court an uſeleſs argument, on a point which that court held itſelf precluded from deciding in their favor. He therefore conceived that it would be rendering the counſel a ſervice and a favor, to appriſe them beforehand of the view which the court had taken of the ſubject; ſo as to let them ſee in time, the neceſſity of endeavouring to produce new teſtimony, which might vary the caſe, and take it out of the authority of former deciſions.

Secondly, There were more than one hundred civil cauſes then depending in the ſaid court, as appears by the exhibit marked No. 1, which this reſpondent prays may be taken as part of this his anſwer. Many of thoſe cauſes had already been ſubjected to great delay, and it was the peculiar duty of this reſpondent, as preſiding judge, to take care, that as little time as poſſible ſhould be unneceſſarily conſumed, and that every convenient and proper diſpatch ſhould be given to the buſineſs of the citizens. He did believe, that an early communication of the court's opinion, might tend to the

the ſaving of time, and conſequently to the diſpatch of buſineſs.

Thirdly, As the court held itſelf bound by the former deciſions, and could not therefore alter its opinion in conſequence of any argument; and as it was the duty of the court to charge the jury on the law, in all caſes ſubmitted to their conſideration, he knew that this opinion muſt not only be made known at ſome period or other of the trial, but muſt at the end of the trial be expreſsly delivered to the jury by him, in a charge from the bench: and he could not ſuppoſe, and cannot yet imagine, that an opinion, which was to be thus ſolemnly given in charge to the jury, at the cloſe of the trial, could make any additional impreſſion on their minds, from the circumſtance of its being intimated to the counſel before the trial began, in the hearing of thoſe who might be afterwards ſworn on the jury.

And, laſtly, it was then his opinion, and ſtill is, that it is the duty of every court of this country, and was his duty on the trial now under conſideration, to guard the jury againſt erroneous impreſſions reſpecting the laws of the land. He well knows, that it is the right of juries in criminal caſes, to give a general verdict of acquittal, which cannot be ſet aſide on account of its being contrary to law, and that hence reſults the power of juries, to decide on the law as well as on the facts, in all criminal caſes. This power he holds to be a ſacred part of our legal privileges, which he never has attempted, and never will attempt to abridge or to obſtruct. But he alſo knows, that in the exerciſe of this power, it is the duty of the jury to govern themſelves by the laws of the land, over which they have no diſpenſing power; and their right to expect and receive from the court all the aſſiſtance which it can give for rightly underſtanding the law. To withhold this aſſiſtance, in any manner whatever; to forbear to give it in that way which may be moſt effectual for preſerving the jury from error and miſtake; would be an abandonment or forgetfulneſs of duty, which no judge could juſtify to his conſcience or to the laws. In this caſe, therefore, where the queſtion of law ariſing on the indictment,

dictment, had been finally ſettled by authoritative deciſions, it was the duty of the court, and eſpecially of this reſpondent as preſiding judge, early to appriſe the counſel and the jury of theſe deciſions, and their effect, ſo as to ſave the former from the danger of making an improper attempt to miſlead the jury in a matter of law, and the jury from having their minds preoccupied by erroneous impreſſions.

It was for theſe reaſons, that on the 22d day of April, 1800, when the ſaid John Fries was brought into court, and placed in the priſoners' box for trial, but before the petit jury was impannelled to try him, this reſpondent informed the abovementioned William Lewis, one of his counſel, the aforeſaid Alexander James Dallas not being then in court, "that the court had deliberately conſidered the indictment againſt John Fries for treaſon, and the three ſeveral overt acts of treaſon ſtated therein: That the crime of treaſon was defined by the conſtitution of the United States: That as the federal legiſlature had the power to make, alter, or repeal laws, ſo the judiciary only had the power, and it was their duty, to declare, expound and interpret the conſtitution and laws of the United States: That it was the duty of the court, in all criminal caſes, to ſtate to the petit jury, their opinion of the law ariſing on the facts; but the petit jury in all criminal caſes, were to decide both the law and the facts, on a conſideration of the whole caſe: That there muſt be ſome conſtructive expoſition of the terms uſed in the conſtitution, 'levying war againſt the United States:' That the queſtion, what acts amounted to levying war againſt the United States, or the government thereof, was a queſtion of law, and had been decided by judges Patterſon and Peters, in the caſes of Vigol and Mitchel, and by judges Iredell and Peters, in the caſe of John Fries, priſoner at the bar, in April 1799: That judge Peters remained of the ſame opinion, which he had twice before delivered, and he, this reſpondent, on long and great conſideration, concurred in the opinion of judges Patterſon, Iredell, and Peters: That to prevent unneceſſary delay, and to ſave time on the trial of John Fries, and to prevent a delay of juſtice, in the great

great number of civil cauſes depending for trial at that term, the court had drawn up in writing, their opinion of the law, ariſing on the overt acts, ſtated in the indictment againſt John Fries; and had directed David Caldwell their clerk, to make out three copies of their opinion, one to be delivered to the attorney of the diſtrict, one to the counſel for the priſoner, and one to the petit jury, after they ſhould have been impannelled and heard the indictment read to them by the clerk, and after the diſtrict attorney ſhould have ſtated to them the law on the overt acts alledged in the indictment, as it appeared to him."

After theſe obſervations, this reſpondent delivered one of the abovementioned copies to the aforeſaid William Lewis, then attending as one of the priſoner's counſel; who read part of it, and then laid it down on the table before him. Some obſervations were then made on the ſubject, by him and the abovementioned Alexander James Dallas, who had then come into court; but this reſpondent doth not now recollect thoſe obſervations, and cannot undertake to ſtate them accurately.

And this reſpondent further ſaith, that the paper marked exhibit No. 2, and herewith exhibited, which he prays leave to make part of this his anſwer, is a true copy of the original opinion drawn up by him, and concurred in by the ſaid Richard Peters, as above ſet forth, which original opinion is now in the poſſeſſion of this reſpondent, ready to be produced to this honorable court. He may have erred in forming this opinion, and in the time and manner of making it known to the counſel for the priſoner. If he erred in forming it, he erred in common with his colleague and with two of his predeceſſors; and he preſumes to hope that an error which has never been deemed criminal in them, will not be imputed as a crime to him, who was led into it by their example and their authority. If he erred in the time and manner of making known this opinion, he feels a juſt confidence, that when the reaſons which he has alledged for his conduct, and by which it ſeemed to him to be fully juſtified, ſhall come to be carefully weighed,

weighed, they will be ſufficient to prove, if not that this conduct was perfectly regular and correct, yet that he might ſincerely have conſidered it as right; and that in a caſe where ſo much doubt may exiſt, to have committed a miſtake, is not to have committed a crime.

And this reſpondent further anſwering inſiſts, that the opinion thus delivered to the priſoner's counſel; viz. that "any inſurrection or riſing of any body of people within the United States, for the purpoſe of reſiſting or preventing by force or violence, under any pretence whatever, the execution of any ſtatute of the United States, for levying or collecting taxes, or for any other object of a general or national concern, is levying war againſt the United States, within the contemplation and true meaning of the conſtitution of the United States," is a legal and a correct opinion, ſupported not only by the two previous deciſions abovementioned, but alſo by the plaineſt principles of law and reaſon, and by the uniform tenor of legal adjudications in England and Great Britain, from the revolution in 1688 to this time. It ever was, and now is his opinion that the peace and ſafety of the national federal government, muſt be endangered, by any other conſtruction of the terms "levying war againſt the United States," uſed by the federal conſtitution; and he is confident that no judge of the federal government, no judge of a ſuperior ſtate court, nor any gentleman of eſtabliſhed reputation for legal knowledge, would or could deliberately give a contrary opinion.

If however this opinion were erroneous, this reſpondent would be far leſs cenſurable than his predeceſſors, by whoſe example he was led aſtray, and by whoſe authority he conſidered himſelf bound. Was it an error to conſider himſelf bound by the authority of their previous deciſions? If it were, he was led into the error by the uniform courſe of judicial proceedings, in this country and in England, and is ſupported in it, by one of the fundamental principles of our juriſprudence. Can ſuch an error be a crime or miſdemeanor?

If, on the other hand, the opinion be in itſelf correct, as he believes and inſiſts that it is, could the expreſ-

ſion

ſion of a correct opinion on the law, wherever and however made, miſlead the jury, infringe their rights, or give an improper bias to their judgments? Could truth excite improper prejudice? Could the jury be leſs prepared to hear the law diſcuſſed, and to decide on it correctly, becauſe it was correctly ſtated to them by the court? And is not that a new kind of offence, in this country at leaſt, which conſiſts in telling the truth, and giving a correct expoſition of the law?

As to the ſecond ſpecific charge adduced in ſupport of the firſt article of impeachment, which accuſes this reſpondent "of reſtricting the counſel for the ſaid Fries, from recurring to ſuch Engliſh authorities as they believed appoſite, or from citing certain ſtatutes of the United States, which they deemed illuſtrative of the poſitions upon which they intended to reſt the defence of their client," this reſpondent admits that he did, on the above mentioned trial, expreſs it as his opinion to the aforeſaid counſel for the priſoner, "that the deciſions in England, in caſes of indictments for treaſon at common law, againſt the perſon of the king, ought not to be read to the jury, on trials for treaſon under the conſtitution and ſtatutes of the United States; becauſe ſuch deciſions could not inform, but might miſlead and deceive the jury: that any deciſions on caſes of treaſon, in the courts of England, before the revolution of 1688, ought to have very little influence in the courts of the United States; that he would permit deciſions in the courts of England or of Great Britain, ſince the ſaid revolution, to be read to the court or jury, for the purpoſe of ſhewing what acts have been conſidered by thoſe courts, as a conſtructive levying of war againſt the king of that country, in his regal capacity, but not againſt his perſon; becauſe levying war againſt *his government*, was of the ſame nature as levying war againſt *the government of the United States*: but that ſuch deciſions, nevertheleſs, were not to be conſidered as authorities binding on the courts and juries of this country, but merely in the light of opinions entitled to great reſpect, as having been delivered after full conſideration, by men of great legal learning and ability.

Theſe

Theſe are the opinions which he did, on that occaſion, deliver to the counſel for the priſoner, and which he then thought, and ſtill thinks, it was his duty to deliver. The counſellors admitted to practice in any court of juſtice are, in his opinion, and according to univerſal practice, to be conſidered as officers of ſuch courts, and miniſters of juſtice therein, and as ſuch, ſubject to the direction and control of the court, as to their conduct in its preſence, and in conducting the defence of criminals on trial before it.—As counſel, they owe to the perſon accuſed, diligence, fidelity, and ſecrecy, and to the court and jury, due and correct information, according to the beſt of their knowledge and ability, on every matter of law which they attempt to adduce in argument. The court, on the other hand, hath power, and is bound in duty, to decide and direct what evidence, whether by record or by precedents of deciſions in courts of juſtice, is proper to be admitted for the eſtabliſhment of any matter of law or fact. Conſequently, ſhould counſel attempt to read to a jury, as a law ſtill in force, a ſtatute which had been repealed, or a deciſion which had been reverſed, or the judgments of courts in countries whoſe laws have no connection with ours, it would be the duty of the court to interpoſe, and prevent ſuch an impoſition being practiſed on the jury. For theſe reaſons, this reſpondent thinks that his conduct was correct, in expreſſing to the counſel for Fries, the opinions ſtated above. He is not bound to anſwer here for the correctneſs of thoſe principles, though he thinks them inconteſtible; but merely for the correctneſs of his motives in delivering them. A contrary opinion would convert this honorable court, from a court of impeachment into a court of appeals; and would lead directly to the ſtrange abſurdity, that whenever the judgment of an inferior court ſhould be reverſed on appeal or writ of error, the judges of that court muſt be convicted of high crimes and miſdemeanors, and turned out of office: that error in judgment is a puniſhable offence, and that crimes may be committed without any criminal intention.—Againſt a doctrine ſo abſurd and miſchievous, ſo contrary to every notion of juſtice hitherto entertained, ſo

utterly ſubverſive of all that part of our ſyſtem of juriſprudence, which has been wiſely and humanely eſtabliſhed for the protection of innocence, this reſpondent deems it his duty now, and on every fit occaſion, to enter his proteſt and lift up his voice; and he truſts that in the diſcharge of this duty, infinitely more important to his country than to himſelf, he ſhall find approbation and ſupport in the heart of every American, of every man throughout the world, who knows the bleſſings of civil liberty, or reſpects the principles of univerſal juſtice.

It is only then, for the correctneſs of his motives in delivering theſe opinions, that he can now be called to anſwer; and this correctneſs ought to be preſumed, unleſs the contrary appear by ſome direct proof, or by ſome violent preſumption, ariſing from his general conduct on the trial, or from the glaring impropriety of the opinion itſelf. For he admits that caſes may be ſuppoſed, of an opinion delivered by a judge, ſo palpably erroneous, unjuſt, and oppreſſive, as to preclude the poſſibility of its having proceeded from ignorance or miſtake.

Do the opinions now under conſideration bear any of theſe marks? This honorable court need not be informed that there has exiſted in England no ſuch thing as treaſon at common law, ſince the year 1350, when the ſtatute of the 25th Edward III, chap. 2, declaring what alone ſhould in future be judged treaſon, was paſſed. Is it perfectly clear that deciſions made before that ſtatute, 450 years ago, when England, with the reſt of Europe, was ſtill wrapped in the deepeſt gloom of ignorance and barbariſm; when the ſyſtem of Engliſh juriſprudence was ſtill in its infancy; when law and juſtice and reaſon were perpetually trampled under foot by feudal oppreſſion and feudal anarchy; when, under an able and vigorous monarch, every thing was adjudged to be treaſon which he thought fit to call ſo, and under a weak one nothing was conſidered as treaſon which turbulent, powerful and rebellious nobles thought fit to perpetrate; is it perfectly clear that deciſions made at ſuch a time, and under ſuch circumſtances, ought to be received

received by the courts of this country as authorities to govern their deciſions, or lights to guide the underſtanding of juries? Is it perfectly clear that deciſions made in England, on the ſubject of treaſon, before the revolution of 1668, by which alone the balance of the Engliſh conſtitution was adjuſted, and the Engliſh liberties were fixt on a firm baſis; deciſions made either during the furious civil wars, in which two rival families contended for the crown; when, in the viciſſitudes of war, death and confiſcation, in the forms of law, continually walked in the train of the victors, and actions were treaſonable or praiſe-worthy, according to the preponderance of the party by whoſe adherents they were perpetrated; during the reigns of three able and arbitrary monarchs, who ſucceeded this dreadful conflict, and relaxed or invigorated the law of treaſon, according to their anger, their policy or their caprice; or during thoſe terrible ſtruggles between the principles of liberty, not yet well defined or underſtood, on one hand, and arbitrary power, inſinuating itſelf under the forms of the conſtitution, on the other; ſtruggles which preſented at ſome times the wildeſt anarchy, at others, the extremes of ſervile ſubmiſſion, and after having brought one king to the ſcaffold, ended in the expulſion of another from his throne; Is it clear that deciſions on the law of treaſon, made in times like theſe, ought not only to be received as authorities in the courts of this country, but alſo to have great influence on their deciſions? Is it clear that deciſions made in England, as to what acts will amount to levying war againſt the king, perſonally, and not againſt his government, are applicable to the conſtitution and laws of this country? Is it clear that ſuch Engliſh deciſions on the ſubject of treaſon, as are applicable to our conſtitution and laws, are to be received in our courts, not merely as the opinions of learned and able men, which may enlighten their judgment, but as authorities which ought to govern abſolutely their deciſions? Is all this ſo clear, that a judge could not honeſtly and ſincerely have thought the contrary? that he could not have expreſſed an opinion to the contrary, without corrupt or improper motives?

If

If it be not thus clear, then muſt it be admitted that this reſpondent, ſincerely and honeſtly, and in the beſt of his judgment, conſidered theſe deciſions as wholly inadmiſſible, or admiſſible only for the purpoſes and to the extent which he pointed out.

And if he did ſo conſider them, was it not his duty to prevent their being read to the jury, except under thoſe reſtrictions, and for thoſe purpoſes? Would his duty permit him to ſit ſilently and ſee the jury impoſed on and miſled? to ſit ſilently and hear a book read to them as containing the law, which he knew did not contain the law? Such ſilence would have rendered him a party to the deception, and would have juſtly ſubjected him to all the contumely, which a conſcientious and courageous diſcharge of his duty, has ſo unmeritedly brought on his name.

With reſpect to the ſtatutes of the United States, which he is charged with having prevented the priſoner's counſel from citing on the aforeſaid trial, he denies that he prevented any act of Congreſs from being cited, either to the court or jury, on the ſaid trial; or declared at any time, that he would not permit the priſoner's counſel to read to the jury, or to the court, any act of Congreſs whatever. Nor does he remember or believe, that he expreſſed on the ſaid trial, any diſapprobation of the conduct of the circuit court before whom the ſaid caſe was firſt tried, in permitting the act of Congreſs relating to crimes leſs than treaſon, commonly called the *ſedition act*, to be read to the jury. He admits indeed that he was then and ſtill is of opinion, that the ſaid act of Congreſs was wholly irrelevant to the iſſue, in the trial of John Fries, and therefore ought not to have been read to the jury, or regarded by them. This opinion may be erroneous, but he truſts that the following reaſons on which it was founded, will be conſidered by this honorable court, as ſufficiently ſtrong to render it poſſible, and even probable, that ſuch an opinion might be ſincerely held and honeſtly expreſſed:—1ſt, That Congreſs did not intend by the ſedition law, to define the crime of treaſon by "levying war." Treaſon and ſedition are crimes very diſtinct in their nature, and ſubject

to

to very different punishments; the former by death, and the latter by fine and imprisonment. 2dly, The sedition law makes a combination or conspiracy, with intent to impede the operation of any law of the United States, or the advising or attempting to procure any insurrection or riot, a high misdemeanor punishable by fine and imprisonment; but a combination or conspiracy with intent to prevent the execution of a law, or with intent to raise an insurrection for that purpose, or even with intent to commit treason, is not treason by "levying war" against the United States, unless it be followed by an attempt to carry such combination or conspiracy into effect, by actual force or violence. 3dly, The constitution of the United States is the fundamental and supreme law, and having defined the crime of treason, Congress could not give any legislative interpretation or exposition of that crime, or of the part of the constitution by which it is defined. 4thly, The judicial authority of the United States is alone vested with power to expound their constitution and laws.

And this respondent further answering saith, that after the above mentioned proceedings had taken place in the said trial, it was postponed until the next day, Wednesday, April 23d, 1800; when at the meeting of the court, this respondent told both the above mentioned counsel for the prisoner, "that to prevent any misunderstanding of any thing that had passed the day before, he would inform them that although the court retained the same opinion of the law, arising on the overt acts charged in the indictment against Fries, yet the counsel would be permitted to offer arguments to the court, for the purpose of shewing them that they were mistaken in the law; and that the court, if satisfied that they had erred in opinion, would correct it: and also that the counsel would be permitted to argue before the petit jury, that the court were mistaken in the law." And this respondent added, that the court had given no opinion as to the facts in the case, about which both the counsel had declared that there would be no controversy.

After some observations by the said William Lewis and Alexander James Dallas, they both declared to the court,

court, "that they did not any longer conſider themſelves as the counſel for John Fries the priſoner." This reſpondent then aſked the ſaid John Fries, whether he wiſhed the court to appoint other counſel for his defence? He refuſed to have other counſel aſſigned; in which he acted, as this reſpondent believes and charges, by the advice of the ſaid William Lewis and Alexander James Dallas: whereupon the court ordered the ſaid trial to be had on the next day, Thurſday, the 24th of April, 1800.

On that day the trial was proceeded in; and before the jurors were ſworn, they were, by the direction of the court, ſeverally aſked on oath, whether they were in any way related to the priſoner, and whether they had ever formed or delivered any opinion as to his guilt or innocence, or that he ought to be puniſhed? Three of them anſwering in the affirmative were withdrawn from the pannel. The ſaid John Fries was then informed by the court, that he had a right to challenge thirty-five of the jury, without ſhewing any cauſe of challenge againſt them, and as many more as he could ſhew cauſe of challenge againſt. He did accordingly challenge peremptorily thirty-four of the jury, and the trial proceeded. In the evening, the court adjourned till the next day, Friday, the 25th of April; when, after the diſtrict attorney had ſtated the principal facts proved by the witneſſes, and had applied the law to thoſe facts, this reſpondent, with the concurrence of his colleague, the ſaid Richard Peters, delivered to the jury the charge contained and expreſſed in exhibit marked No. 3, and herewith filed, which he prays may be taken as part of this his anſwer.

Immediately after the petit jury had delivered their verdict, this reſpondent informed the ſaid Fries, from the Bench, that if he, or any perſon for him, could ſhew any legal ground, or ſufficient cauſe, to arreſt the judgment, ample time would be allowed him for that purpoſe. But no cauſe being ſhewn, ſentence of death was paſſed on the ſaid Fries, on Tueſday the 2d day of May, 1800, the laſt day of the term; and he was afterwards pardoned by John Adams, then Preſident of the United States.

And

And this reſpondent further anſwering ſaith, that if the two inſtances of miſconduct firſt ſtated in ſupport of the general charge, contained in the firſt article of impeachment, were true as alleged, yet the inference drawn from them, viz. "that the ſaid Fries was thereby deprived of the benefit of counſel for his defence," is not true. He inſiſts that the ſaid Fries was de[illegible] benefit of counſel, not by any miſcon[illegible]dent, but by the conduct and advi[illegible]tioned William Lewis and Alexan[illegible] having been, with their own c[illegible] court as counſel for the priſoner[illegible] defence, and adviſed him to ref[illegible] offered to him by the court, under[illegible] had been prejudged, and their liber[illegible] defence, according to their own jud[illegible] reſtricted by this reſpondent; but in re[illegible] knew the law and the facts to be againſt[illegible] caſe to be deſperate, and ſuppoſed that thei[illegible] themſelves under this pretence, might [illegible] againſt the court; might give riſe to an opi[illegible] priſoner had not been fairly tried; and in t[illegible] conviction, which from their knowledge of t[illegible] the facts they knew to be almoſt certain, might priſoner in an application to the Preſident for a p[illegible] That ſuch was the real motive of the ſaid priſoner's [illegible]ſel, for depriving their client of legal aſſiſtance on trial, this reſpondent is fully perſuaded, and expects to make appear, not only from the circumſtances of the caſe, but from their own frequent and public declarations.

As little can this reſpondent be juſtly charged with having by any conduct of his, endeavored to "wreſt from the jury their indiſputable right to hear argument, and determine upon the queſtion of law as well as the queſtion of fact involved in the verdict which they were required to give." He denies, that he did at any time declare that the aforeſaid counſel ſhould not at any time addreſs the jury, or did in any manner hinder them from addreſſing the jury on the law as well as on the facts ariſing in the caſe. It was expreſsly ſtated in the

copy

n delivered as above ſet forth to William
had a right to determine the law
d the ſaid William Lewis and Al-
re expreſsly informed, before
on to abandon the defence,
argue the law to the jury,
it the ſaid William Lewis did
red to him as aforeſaid, ex-
the beginning of it, and of
t knowing its contents: and
es Dallas read no part of the
ar ago, when he ſaw a very
t by a certain W. S. Biddle.
ther anſwering, ſaith, that
n of the United States, *civil*
r perſons, are ſubject to im-
y for treaſon, bribery, corrup-
e or miſdemeanor, conſiſting in
ed, in violation of ſome law for-
ng it; on conviction of which act,
d from office; and may after con-
and puniſhed therefor, according to
arly reſults, that no civil officer of the
n be impeached, except for ſome offence
may be indicted at law; and that no evi-
received on an impeachment, except ſuch
dictment at law, for the ſame offence, would
e. That a judge cannot be indicted or pun-
rding to law, for any act whatever, done by
his judicial capacity, and in a matter of which he
riſdiction, through error of judgment merely,
out corrupt motives, however manifeſt his error
y be, is a principle reſting on the plaineſt maxims of
eaſon and juſtice, ſupported by the higheſt legal author-
ity, and ſanctioned by the univerſal ſenſe of mankind.
He hath already endeavored to ſhew, and he hopes with
ſucceſs, that all the opinions delivered by him in the
ourſe of the trials now under conſideration, were cor-
ct in themſelves, and in the time and manner of ex-
reſſing them; and that even admitting them to have
en incorrect, there was ſuch ſtrong reaſon in their fa-
vor,

vor, as to remove from his conduct every ſuſpicion of improper motives. If theſe opinions were incorrect, his miſtake in adopting them, or in the time or manner of expreſſing them, cannot be imputed to him as an offence of any kind, much leſs as a high crime and miſdemeanor, for which he ought to be removed from office; unleſs it can be ſhewn by clear and legal evidence, that he acted from corrupt motives. Should it be conſidered that ſome impropriety is attached to his conduct, in the time and mode of expreſſing any of theſe opinions; ſtill he apprehends, that a very wide difference exiſts between ſuch impropriety, the caſual effect of human infirmity, and a high crime and miſdemeanor for which he may be impeached, and muſt on conviction be removed from office.

Finally, this reſpondent, having thus laid before this honorable court a true ſtate of his caſe, ſo far as reſpects the firſt article of impeachment, declares, upon the ſtricteſt review of his conduct during the whole trial of John Fries for treaſon, that he was not on that occaſion unmindful of the ſolemn duties of his office as judge; that he faithfully and impartially, and according to the beſt of his ability and underſtanding, diſcharged thoſe duties towards the ſaid John Fries; and that he did not in any manner during the ſaid trial, conduct himſelf arbitrarily, unjuſtly or oppreſſively, as he is accuſed by the honorable the Houſe of Repreſentatives.

And the ſaid Samuel Chaſe, for plea to the ſaid firſt article of impeachment, ſaith, that he is not guilty of any high crime or miſdemeanor, as in and by the ſaid firſt article is alledged; and this he prays may be inquired of by this honorable court in ſuch manner as law and juſtice ſhall ſeem to them to require.

The ſecond article of impeachment charges, that this reſpondent, at the trial of James Thompſon Callender for a libel, in May 1800, did, "with intent to oppreſs and procure the conviction of the ſaid Callender, over-rule the objection of John Baſſet, one of the jury, who wiſhed to be excuſed from ſerving on the ſaid trial, becauſe he had made up his mind as to the publication from which the words, charged to be libellous in the indictment, were extracted." In

In anſwer to this article, this reſpondent admits that he did, as one of the aſſociate juſtices of the ſupreme court of the United States, hold the circuit court of the United States, for the diſtrict of Virginia, at Richmond, on Thurſday the 22d day of May, in the year 1800, and from that day, till the 30th of the ſame month; when Cyrus Griffin, then diſtrict judge of the United States for the diſtrict of Virginia, took his ſeat in the ſaid court; and that during the reſidue of that ſeſſion of the ſaid court, which continued till the day of June, in the ſame year, this reſpondent and the ſaid Cyrus Griffin, held the ſaid court together. But how far any of the other matters charged in this article, are founded in truth or law, will appear from the following ſtatement; which he ſubmits to this honorable court, by way of anſwer to this part of the accuſation.

By an act of Congreſs paſſed on the 4th day of May, A. D. 1798, it is among other things enacted, "That if any perſon ſhall write, print, utter or publiſh, or ſhall knowingly and wittingly aſſiſt and aid in writing, printing, uttering or publiſhing, any falſe, ſcandalous, and malicious writing or writings, againſt the Preſident of the United States, with intent to defame, or to bring him into contempt or diſrepute, ſuch perſon, being thereof convicted, ſhall be puniſhed by fine, not exceeding two thouſand dollars, and by impriſonment, not exeeeding two years:" and "that if any perſon ſhall be proſecuted under this act, it ſhall be lawful for him to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel; and the jury ſhall have a right to determine the law and the fact, under the direction of the court, as in other caſes," as in and by the ſaid act, commonly called the *ſedition law*, to which this reſpondent begs leave to refer this honorable court, will more fully appear.

At the meeting of the laſt abovementioned circuit court, this reſpondent, as required by the duties of his office, delivered a charge to the grand jury; in which, according to his conſtant practice, and to his duty as a judge, he gave in charge to them, ſeveral acts of Congreſs for the puniſhment of offences, and among them, the

the abovementioned act, called the ſedition law; and directed the ſaid jury to make particular inquiry, concerning any breaches of theſe ſtatutes or any of them, within the diſtrict of Virginia. On the 24th day of May, 1800, the ſaid jury found an indictment againſt one James Thompſon Callender, for printing and publiſhing againſt the form of the ſaid act of Congreſs, a falſe, ſcandalous, and malicious libel, called "The Proſpect before Us," againſt John Adams, then Preſident of the United States, in his official character as Preſident; as appears by an official copy of the ſaid indictment, marked exhibit No. 4, which this reſpondent begs leave to make part of this his anſwer.

On Wedneſday, the 28th of the ſame month, May, 1800, Philip Norbonne Nicholas, eſq. now attorney general of the ſtate of Virginia, and George Hay, eſq. now diſtrict attorney of the United States, for the diſtrict of Virginia, appeared in the ſaid circuit court as counſel for the ſaid Callender; and on Tueſday the 3d of June following, his trial commenced, before this reſpondent, and the ſaid Cyrus Griffin, who then ſat as aſſiſtant judge. The petit jurors being called over, eight of them appeared, namely, Robert Gamble, Bernard Mackham, John Barrell, William Auſtin, William Richardſon, Thomas Tinſley, Matthew Harvey and John Baſſet; who as they came to the book to be ſworn, were ſeverally aſked on oath, by direction of the court, "whether they had ever formed and delivered any opinion reſpecting the ſubject matter then to be tried, or concerning the charges contained in the indictment?" They all anſwered in the negative, and were ſworn in chief to try the iſſue: the counſel for the ſaid Callender declaring, that it was unneceſſary to put this queſtion to the other four jurymen. William Mayo, James Hayes, Henry S. Shore and John Prior, they alſo were immediately ſworn in chief. No challenge was made by the ſaid Callender or his counſel, to any of theſe jurors; but the ſaid counſel declared that they would rely on the anſwer that ſhould be given by the ſaid jurors, to the queſtion thus put by order of the court.

After the abovementioned John Baſſet, whom this reſpondent

reſpondent ſuppoſes and admits to be the perſon mentioned in the article of impeachment now under conſideration, had thus anſwered in the negative, to the queſtion put to him by order of the court, as abovementioned, which this reſpondent ſtates to be the legal and proper queſtion, to be put to jurors on ſuch occaſions, he expreſſed to the court, his wiſh to be excuſed from ſerving on the ſaid trial, becauſe he had made up his mind, or had formed his opinion, "that the publication, called 'The Proſpect before Us,' from which the words charged in the indictment as libellous, were ſaid to be extracted, but which he had never ſeen, was, according to the repreſentation of it, which he had received, within the ſedition law." But the court did not conſider this declaration by the ſaid John Baſſet, as a ſufficient reaſon for withdrawing him from the jury, and accordingly directed him to be ſworn in chief.

In this opinion and deciſion, as in all the others delivered during the trial in queſtion, this reſpondent concurred with his colleague, the aforementioned Cyrus Griffin, in whom none of theſe opinions have been conſidered as criminal. He contends that the opinion itſelf was legal and correct; and he denies that he concurred in it, under the influence of any "ſpirit of perſecution and injuſtice," or with any "intent to oppreſs and procure the conviction of the priſoner;" as is moſt untruly alledged by the ſecond article of impeachment. His reaſons were correct and legal. He will ſubmit them with confidence to this honorable court; which, although it cannot condemn him for an incorrect opinion, proceeding from an honeſt error in judgment, and ought not to take on itſelf the power of inquiring into the correctneſs of his deciſions, but merely that of examining the purity of his motives; will, nevertheleſs weigh his reaſons, for the purpoſe of judging how far they are of ſufficient force, to juſtify a belief that they might have appeared ſatisfactory to him. If they might have ſo appeared, if the opinion which he founded on them be not ſo palpably and glaringly wrong, as to carry with it internal evidence of corrupt motives, he cannot in delivering it have committed an offence.

This

This honorable court need not be informed, that it is the duty of courts before which criminal trials take place, to prevent jurors from being excuſed for light and inſufficient cauſes. If this rule were not obſerved, it would follow, that as ſerving on ſuch trials as a juror, is apt to be a very diſagreeable buſineſs, eſpecially to thoſe beſt qualified for it, there would be a great difficulty, and often an impoſſibility, in finding proper juries. The law has therefore eſtabliſhed a fixed and general rule on this ſubject, calculated not to gratify the wiſhes or the unreaſonable ſcruples of jurors, but to ſecure to the party accuſed, as far as in the imperfection of human nature it can be ſecured, a fair and impartial trial. The criterion eſtabliſhed by this rule is, "that the juror ſtands indifferent between the government and the perſon accuſed, as to the matter *in iſſue*, on the indictment." This indifference is always, according to a well known maxim of law, to be preſumed, unleſs the contrary appear; and the contrary may be alledged by way of excuſe by the juror himſelf, or by the priſoner by way of challenge. Even if not alledged, it may be inquired into by the court of its own mere motion, or on the ſuggeſtion of the priſoner, and it may be eſtabliſhed by the confeſſion of the juror himſelf, on oath, or by other teſtimony.

But in order to ſhew that a juror does not "ſtand indifferent between the accuſer and the accuſed, *as to the matter in iſſue*," it is not ſufficient to prove that he has expreſſed a general opinion, "that ſuch an offence as that charged by the indictment ought to be puniſhed;" or "that the party accuſed, if guilty of the offence charged againſt him, ought to be puniſhed;" or "that a book, for printing and publiſhing which the party is indicted, comes within the law on which the indictment is founded." All theſe are general expreſſions of opinion, as to the criminality of an act of which the party is accuſed, and of which he *may* be guilty; not declarations of an opinion that he actually is guilty of the offence with which he ſtands charged. It is impoſſible for any man in ſociety to avoid having, and extremely difficult for him to avoid expreſſing, an opinion, as to the criminality

criminality or innocence of thoſe acts, which for the moſt part, are the ſubjects of indictments for offences of a public nature; ſuch as treaſon, ſedition, and libels againſt the government. Such acts always engage public attention, and become the ſubject of public converſation; and if to have formed or expreſſed an opinion, as to the general nature of thoſe acts, were a ſufficient ground of challenge to a juror, when alledged againſt him, or of excuſe from ſerving when alledged by himſelf, it would be in the power of almoſt every offender, to prevent a jury from being impannelled to try him, and of almoſt every man, to exempt himſelf from the unpleaſant taſk of ſerving on ſuch juries. The magnitude and heinous nature of an offence, would give it a greater tendency to attract public attention, and to draw forth public expreſſions of indignation; and would thus increaſe its chance of impunity.

To the preſent caſe this reaſoning applies with peculiar force. The "Proſpect before Us" is a libel ſo profligate and atrocious, that it excited diſguſt and indignation in every breaſt not wholly depraved. Even thoſe whoſe intereſt it was intended to promote, were, as this reſpondent has underſtood and believes, either ſo much aſhamed of it, or ſo apprehenſive of its effects, that great pains were taken by them to withdraw it from public and general circulation. Of ſuch a publication, it muſt have been extremely difficult to find a man of ſufficient character and information to ſerve on a jury, who had not formed an opinion, either from his own knowledge, or from report. The juror in the preſent caſe had expreſſed no opinion. He had formed no opinion, as to the facts. He had never ſeen the "Proſpect before Us," and therefore could have formed no fixed or certain opinion about its nature or contents. They had been reported to him, and he had formed an opinion that if they were ſuch as reported, the book was within the ſcope and operation of a law for the puniſhment of "falſe, ſcandalous and malicious libels, againſt the Preſident in his official capacity, written or publiſhed with intent to defame him." And who is there, that having either ſeen the book or heard of it, had not neceſſarily formed the ſame opinion?

But

But this juror had formed no opinion about the guilt or innocence of the party accuſed; which depended on four facts wholly diſtinct from the opinion which he had formed. Firſt, whether the contents of the book were really ſuch as had been repreſented to him? Secondly, whether they ſhould, on the trial, be proved to be true? Thirdly, whether the party accuſed was really the author or publiſher of this book? And fourthly, whether he wrote or publiſhed it "with intent to defame the Preſident, or to bring him into contempt or diſrepute, or to excite againſt him the hatred of the good people of the United States?" On all theſe queſtions, the mind of the juror was perfectly at large, notwithſtanding the opinion which he had formed. He might, conſiſtently with that opinion, determine them all in the negative; and it was on them that the iſſue between the United States and James Thompſon Callender depended. Conſequently, this juror, notwithſtanding the opinion which he had thus formed, did ſtand indifferent as to the matter in iſſue, in the legal and proper ſenſe, and in the only ſenſe in which ſuch indifference can ever exiſt; and therefore his having formed that opinion, was not ſuch an excuſe as could have juſtified the court in diſcharging him from the jury.

That this juror did not himſelf conſider this opinion as an opinion reſpecting the "matter in iſſue," appears clearly from this circumſtance, that when called upon to anſwer on oath, "whether he had expreſſed any opinion as to the matter in iſſue?" he anſwered that he had not. Which clearly proves that he did not regard the circumſtance of his having formed this opinion, as a legal excuſe, which ought to exempt him of right from ſerving on the jury; but merely ſuggeſted it as a motive of delicacy, which induced him to wiſh to be excuſed. To ſuch motives of delicacy, however commendable in the perſons who feel them, it is impoſſible for courts of juſtice to yield, without putting it in the power of every man, under pretence of ſuch ſcruples, to exempt himſelf from thoſe duties which all the citizens are bound to perform. Courts of juſtice muſt regulate themſelves by legal principles, which are fixed and univerſal;

verſal; not by delicate ſcruples, which admit of endleſs variety, according to the varying opinions and feelings of men.

Such were the reaſons of this reſpondent, and he preſumes of his colleague the ſaid Cyrus Griffin, for refuſing to excuſe the ſaid John Baſſet, from ſerving on the jury above mentioned. Theſe reaſons, and the deciſion founded on them, he inſiſts were legal and valid. But if the reaſons ſhould be conſidered as invalid, and the deciſion as erroneous, can they be conſidered as ſo clearly and flagrantly incorrect, as to juſtify a concluſion that they were adopted by this reſpondent, through improper motives? Are not theſe reaſons ſufficiently ſtrong, or ſufficiently plauſible, to juſtify a candid and liberal mind in believing, that a judge might honeſtly have regarded them as ſolid? Has it not been conceded, by the omiſſion to proſecute judge Griffin for this deciſion, that his error, if he committed one, was an honeſt error? Whence this diſtinction between this reſpondent and his colleague? And why is that opinion imputed to one as a crime, which in the other is conſidered as innocent?

And the ſaid Samuel Chaſe, for plea to the ſaid ſecond article of impeachment, ſaith, that he is not guilty of any high crime or miſdemeanor, as in and by the ſaid ſecond article is alledged againſt him; and this he prays may be inquired of by this honorable court, in ſuch manner as law and juſtice ſhall ſeem to them to require.

The third article of impeachment alledges that this reſpondent "with intent to oppreſs and procure the conviction of the priſoner, did not permit the evidence of John Taylor, a material witneſs in behalf of the ſaid Callender, to be given in, on pretence that the ſaid witneſs could not prove the truth of the whole of one of the charges, contained in the indictment, although the ſaid charge embraced more than one fact."

In anſwer to this charge, this reſpondent begs leave to ſubmit the following facts and obſervations:—

The indictment againſt James Thompſon Callender, which has been already mentioned, and of which a copy is exhibited with this anſwer, conſiſted of two diſtinct

and

and ſeparate counts, each of which contained twenty diſtinct and independent charges, or ſets of words. Each of thoſe ſets of words was charged as a libel againſt John Adams, as Preſident of the United States—and the 12th charge embraced the following words: "He (meaning Preſident Adams) was a profeſſed ariſtocrat; he proved faithful and ſerviceable to the Britiſh intereſt." The defence ſet up was confined to this charge, and was reſted upon the truth of the words. To the other nineteen charges, no defence of any kind was attempted or ſpoken of, except ſuch as might ariſe from the ſuppoſed unconſtitutionality of the ſedition law; which, if ſolid, applied to the twelfth charge, as well as to the other nineteen. It was to prove the truth of theſe words, that John Taylor, the perſon mentioned in the article of impeachment now under conſideration, was offered as a witneſs. It can hardly be neceſſary to remind this honorable court, that when an indictment for a libel contains ſeveral diſtinct charges, founded on diſtinct ſets of words, the party accuſed, who in ſuch caſes is called the "traverſer," muſt be convicted, unleſs he makes a ſufficient defence againſt every charge. His innocence on one, does not prove him innocent on the others. If the ſedition law ſhould be conſidered as unconſtitutional, the whole indictment, including this twelfth charge, muſt fall to the ground, whether the words in queſtion were proved to be true or not. If the law ſhould be conſidered as conſtitutional, then the traverſer, whether the words in the twelfth charge were proved to be true or not, muſt be convicted on the other nineteen charges, againſt which no defence was offered. This conviction on nineteen charges, would put the traverſer as completely in the power of the court, by which the amount of the fine and the term of the impriſonment were to be fixed, as a conviction upon all the twenty charges. The impriſonment could not exceed two years, nor the fine be more than two thouſand dollars. If then this reſpondent were deſirous of procuring the conviction of the traverſer, he was ſure of his object, without rejecting the teſtimony of John Taylor. If his temper towards the traverſer were ſo vindictive, as to make him feel anxious to obtain an opportunity and excuſe for inflict-

ing on him the whole extent of puniſhment permitted by the law, ſtill a conviction on nineteen charges afforded this opportunity and excuſe, as fully as a conviction on twenty charges. One ſlander more or leſs, in ſuch a publication as the "Proſpect before Us," could ſurely be of no moment. To attain this object, therefore, it was not neceſſary to reject the teſtimony of John Taylor.

That the court did not feel this vindictive ſpirit, is clearly evinced by the moderation of the puniſhment which actually was inflicted on the traverſer, after he was convicted of the whole twenty charges. Inſtead of 2000 dollars, he was fined only 200, and was ſentenced to only nine months impriſonment, inſtead of two years. And this reſpondent avers, that he never felt or expreſſed a wiſh to go further; but that in this deciſion, as well as in every other given in the courſe of the trial, he fully and freely concurred with his colleague, judge Griffin.

As a further proof that his rejection of this teſtimony did not proceed from any improper motive, but from a conviction in his mind that it was legally inadmiſſible, and that it was therefore his duty to reject it, he begs leave to ſtate, that he interfered in order to prevail on the diſtrict attorney to withdraw his objection to thoſe queſtions, and conſent to their being put; which that officer refuſed to do, on the ground "that he did not feel himſelf at liberty to conſent to ſuch a departure from legal principles."

Hence appears the utter futility of a charge, which attributes to this reſpondent a purpoſe as abſurd as it was wicked; and without the ſlighteſt proof, imputes to the worſt motives in him the ſame action, which in his colleague is conſidered as free from blame. But this reſpondent will not content himſelf with ſhewing, that his conduct in concurring with his colleague in the rejection of John Taylor's teſtimony, could not have proceeded from the motives aſcribed to him; but he will ſhow that this rejection, if not ſtrictly legal and proper, as he believes and inſiſts that it is, reſts on legal reaſons of ſufficient force to ſatisfy every mind, that a judge might have ſincerely conſidered it as correct.

The words ſtated as the ground of the twelfth charge above mentioned, are ſtated in the indictment as one entire

tire and indiviſible paragraph, conſtituting one entire offence. This reſpondent conſidered them at the trial, and ſtill conſiders them, as conſtituting one entire charge, and one entire offence; and that they muſt be taken together in order to explain and ſupport each other. It is clear that no words are indictable as libellous, except ſuch as expreſsly, or by plain implication, charge the perſon againſt whom they are publiſhed, with ſome offence either legal or moral. To be an "ariſtocrat," is not in itſelf an offence, either legal or moral, even if it were a charge ſuſceptible of proof; neither was it an offence either legal or moral, for Mr. Adams to be "faithful and ſerviceable to the Britiſh intereſt," unleſs he thereby betrayed or endangered the intereſts of his own country; which does not neceſſarily follow, and is not directly alledged in the publication. Theſe two phraſes, therefore, taken ſeparately, charge Mr. Adams with no offence of any kind; and, conſequently, could not be indictable as libellous: but taken together, they convey the implication that Mr. Adams, being an "ariſtocrat," that is, an enemy to the republican government of his own country, had ſubſerved the Britiſh intereſt, againſt the intereſt of his own country; which would in his ſituation, have been an offence both moral and legal; to charge him with it was, therefore, libellous.

Admitting, therefore theſe two phraſes to conſtitute one diſtinct charge, and one entire offence, this reſpondent conſiders and ſtates it to be law, that no juſtification which went to part only of the offence, could be received. The plea of juſtification muſt always anſwer the whole charge, or it is bad on the demurrer; for this plain reaſon, that the object of the plea is to ſhew the party's innocence; and he cannot be innocent, if the accuſation againſt him be ſupported in part. Where the matter of defence may be given in evidence, without being formally pleaded, the ſame rules prevail. The defence muſt be of the ſame nature, and equally complete, in one caſe, as in the other. The only difference is in the manner of bringing it forward. Evidence, therefore, which goes only to juſtify the charge in part, cannot be received. It is not indeed neceſſary that the whole of this evidence ſhould be given by one witneſs.

The

The juſtification may conſiſt of ſeveral facts, ſome of which may be proved by one perſon, and ſome by another. But proof, in ſuch caſes, muſt be offered as to the whole, or it cannot be received.

In the caſe under conſideration, no proof was offered as to the whole matter contained in the twelfth article. No witneſs except the above mentioned John Taylor, was produced or mentioned. When a witneſs is offered to a court and jury, it is the right and duty of the court, to require a ſtatement of the matters intended to be proved by him. This is the invariable practice of all our courts, and was done moſt properly by this reſpondent and his colleague, on the occaſion in queſtion. From the ſtatement given by the traverſer's counſel, of what they expected to prove by the ſaid witneſs, it appeared that his teſtimony could have no poſſible application to any part of the indictment, except the twelfth charge above mentioned, and but a very weak and imperfect application even to that part. The court, therefore, as it was their right and duty, requeſted that the queſtions intended to be put to the witneſs, ſhould be reduced to writing, and ſubmitted to their inſpection; ſo as to enable them to judge more accurately, how far thoſe queſtions were proper and admiſſible. This being done, the queſtions were of the following tenor and effect:

1ſt. "Did you ever hear Mr. Adams expreſs any ſentiments favorable to monarchy, or 'ariſtocracy,' and what were they?"

2d. "Did you ever hear Mr. Adams while Vice Preſident, expreſs his diſapprobation of the funding ſyſtem?"

3d. "Do you know whether Mr. Adams did not, in the year 1794, vote againſt the ſequeſtration of Britiſh debts, and alſo againſt the bill for ſuſpending intercourſe with Great Britain?"

The ſecond queſtion, it is manifeſt, had nothing to do with the twelfth charge; for Mr. Adams's approbation or diſapprobation of the funding ſyſtem, could not have the moſt remote tendency to prove that he was an ariſtocrat, or had proved faithful and ſerviceable to the Britiſh intereſt. In that part of the publication which furniſhes

furniſhes the matter of the thirteenth charge in the indictment, it is indeed ſtated, that Mr. Adams, "when but in a ſecondary ſtation, cenſured the funding ſyſtem," but theſe words are in themſelves wholly immaterial; and no attempt was made, nor any evidence offered or ſpoken of, to prove the truth of the other matter contained in the thirteenth charge. It was from their connection with that other matter, that theſe words could alone derive any importance; and conſequently their truth or falſehood was altogether immaterial, while that other matter remained unproved. This queſtion, therefore, which went ſolely to thoſe immaterial words, was clearly inadmiſſible. The third queſtion was, in reality, as far as the ſecond from any connection with the matter in iſſue, although its irrelevancy is not quite ſo apparent. Mr. Adams's having voted againſt the two meaſures alluded to in that queſtion, if he did in fact vote againſt them, could by no means prove that he was "faithful and ſerviceable to the Britiſh intereſt," in any ſenſe, much leſs with thoſe improper and criminal views, with which the publication in queſtion certainly meant to charge him. He might, in the honeſt and prudent performance of his duty towards his government and his country, incidentally promote the intereſts of another country; but it was by no means competent for a jury to infer from thence, that he was "faithful" to that other country, or, in other words, that he held the intereſts of that other country chiefly in view, and was actuated in giving his vote by a deſire to promote them, independently of, or without regard to the intereſts of his own country. Such an inference could not be made from the fact, admitting it to be true. The fact, if true, was *no* evidence to ſupport ſuch an inference, therefore the fact was immaterial; and as it is the province and duty of the court, in ſuch circumſtances, to decide on the materiality of facts offered in evidence, it follows clearly, that it was the right and duty of the court, in this inſtance, to reject the third queſtion; an affirmative anſwer to which could have proved nothing in ſupport of the defence.

The firſt queſtion, therefore, and the only remaining one propoſed to be put to this witneſs, ſtood alone; and

and an affirmative anſwer to it, if it could have proved any thing, could have proved only a part of the charge; viz. that Mr. Adams was an ariſtocrat: But evidence to prove a part only of an entire and indiviſible charge, was inadmiſſible for the reaſons ſtated above.

If, on the other hand, the phraſes in queſtion, "that Mr. Adams was an ariſtocrat," that "he had proved faithful and ſerviceable to the Britiſh intereſt," were diſtinct and diviſible, and conſtituted two diſtinct charges, which may perhaps be the proper way of conſidering them, ſtill the abovementioned queſtions were improper and inadmiſſible, in that point of view.

The firſt charge in that caſe is, that Mr. Adams "was an ariſtocrat." To be an ariſtocrat, even if any preciſe and definite meaning could be affixed to the term, is not an offence either legal or moral; conſequently, to charge a man with being an ariſtocrat is not a libel; and ſuch a charge in an indictment for a libel, is wholly immaterial. Nothing is more clear, than that immaterial matters in legal proceedings ought not to be proved, and need not be diſproved. In the next place, the term "ariſtocrat" is one of thoſe vague, indefinite terms, which admit not of preciſe meaning, and are not ſuſceptible of proof. What one perſon might conſider as ariſtocracy, another would conſider as republicaniſm, and a third as democracy. If indictments could be ſupported on ſuch grounds, the guilt or innocence of the party accuſed, muſt be meaſured not by any fixed or known rule, but by the opinions which the jurors appointed to try him might happen to entertain, concerning the nature of ariſtocracy, democracy or republicaniſm. And, laſtly, the queſtion itſelf was as vague, and as void of preciſe meaning, as the charge of which it was intended to furniſh the proof. The witneſs was called upon to declare "whether he had heard Mr. Adams expreſs any and what opinions, favorable to ariſtocracy or monarchy?" How was it to be determined, whether an opinion was favorable to ariſtocracy or monarchy? One man would think it favorable and another not ſo, according to the opinions which they might reſpectively entertain, on political ſubjects. The firſt queſtion, therefore, was inconcluſive, immaterial and inadmiſſible.

The

The ſecond, as has already been remarked, was wholly and manifeſtly foreign from the matter in iſſue. Mr. Adams's diſlike of the funding ſyſtem, if he did in fact diſlike it, had nothing to do with his ariſtocracy or his faithfulneſs to the Britiſh intereſt. There is no pretence for ſaying, that ſuch a queſtion ought to have been admitted.

As to the third, "whether Mr. Adams had not voted againſt the ſequeſtration of Britiſh property, and the ſuſpenſion of commercial intercourſe with Great Britain," it has already been ſhewn to be altogether improper; on the ground that ſuch votes, if given by Mr. Adams, were no evidence whatever of his having been "faithful and ſerviceable to the Britiſh intereſt." If he had been ſo, provided it were in his opinion, at the ſame time uſeful to the intereſts of his own country, which it well might be, and the contrary of which is not alledged by this part of the publication, taken ſeparately, it was no offence of any kind; and to charge him with it was not a libel. The charge was, therefore, immaterial and futile, and no evidence for or againſt it could properly be received. And, finally, if the charge had been material, and the giving of theſe votes had been legal evidence to prove it, that fact was on record in the journals of the Senate, and might have been proved by that record, or an official copy of it. As this evidence was the higheſt of which the caſe admitted, no inferior evidence of it, ſuch as oral proof is well known to be, could be admitted.

For theſe reaſons this reſpondent did concur with his colleague, the ſaid Cyrus Griffin, in rejecting the three above mentioned queſtions; but not any other teſtimony that the ſaid John Taylor might have been able to give. In this he inſiſts that he acted legally and properly, according to the beſt of his ability. If he erred, is is impoſſible, for the reaſons ſtated by him in the beginning of his anſwer to this article, to ſuppoſe that he erred wilfully; ſince he could have had no poſſible motive for a piece of miſconduct ſo ſhameful, and at the ſame time ſo well calculated to give offence. In a point ſo liable to miſapprehenſion and miſrepreſentation, and ſo likely to be uſed as a means of exciting public odium againſt him, it is far more probable, that had he been

been capable of bending his opinion of the law to other motives, he would have admitted illegal teſtimony; which, taken in its utmoſt effect, could have had no tendency to thwart thoſe plans of vengeance againſt the traverſer, under the influence of which he is ſuppoſed to have acted.

If his error was an honeſt one, which as his colleague alſo fell into it, might in charity be ſuppoſed; and, as there is not a ſhadow of evidence to the contrary, muſt in law be preſumed; he cannot, for committing it, be convicted of any offence, much leſs a high crime and miſdemeanor, for which he muſt on conviction be deprived of his office.

And for plea to the ſaid third article of impeachment, the ſaid Samuel Chaſe ſaith, that he is not guilty of any high crime or miſdemeanor, as in and by the ſaid third article is alledged againſt him: and this he prays may be inquired of by this honorable court, in ſuch manner as law and juſtice ſhall ſeem to them to require.

The fourth article of impeachment alledges, that during the whole courſe of the trial of James Thompſon Callender, above mentioned, the conduct of this reſpondent was marked by "manifeſt injuſtice, partiality, and intemperance;" and five particular inſtances of the "injuſtice, partiality and intemperance" are adduced.

The firſt conſiſts, "in compelling the priſoner's counſel to reduce to writing and ſubmit to the inſpection of the court, for their admiſſion or rejection, all queſtions which the ſaid counſel meant to propound to the abovementioned John Taylor, the witneſs."

This reſpondent, in anſwer to this part of the article now under conſideration, admits that the court, conſiſting of himſelf and the abovementioned Cyrus Griffin, did require the counſel for the traverſer, on the trial of James Thompſon Callender abovementioned, to reduce to writing the queſtions which they intended to put to the ſaid witneſs. But he denies that it is more his act than the act of his colleague, who fully concurred in this meaſure. The meaſure, as he apprehends and inſiſts, was ſtrictly legal and proper; his reaſons for adopting it, and he preſumes thoſe of his colleague, he will ſubmit to this honorable court, in order to ſhew

that

that if he, in common with his colleague, committed an error, it was an error into which the beſt and wiſeſt men might have honeſtly fallen.

It will not be denied, and cannot be doubted, that according to our laws, evidence, whether oral or written, may be rejected and prevented from going before the jury, on various grounds.—1ſt. For incompetency; where the ſource from which the evidence is attempted to be drawn, is an improper ſource: as if a witneſs were to be called who was infamous, or intereſted in the event of the ſuit; or a paper ſhould be offered in evidence, which was not between the ſame parties, or was not executed in the forms preſcribed by law. 2d. For irrelevancy: when the evidence offered is not ſuch, as in law will warrant the jury to infer the fact intended to be proved; or where that fact, if proved is immaterial to the iſſue. For theſe reaſons, and perhaps for others which might be ſpecified, evidence may properly be rejected, in trials before our courts.

As little can it be doubted, that according to our laws, the court, and not the jury, is the proper tribunal for deciding all queſtions relative to the admiſſibility of evidence. The effect of the evidence when received, is to be judged of by the jury; but whether it ought to be received, muſt be determined by the court. This ariſes from the very conſtitution of the trial by jury; one fundamental principle of which is, that the jury muſt decide the caſe, not according to vague notions, ſecret impreſſions or general belief, but according to legal and proper evidence, delivered in court. So ſtrictly is this rule obſerved, that if one juror have any knowledge of the matter in diſpute, it may influence his own judgment, but not that of his fellow jurors, unleſs he ſtate it to them on oath in open court; and nothing is more common than for our courts, after all the evidence which the party can produce has been offered and received, to tell the jury that there is no evidence to ſupport the claim, or the defence; or when proof is offered of a certain fact, to determine that ſuch fact is not proper to be given in evidence.

Hence it reſults, and is every day's practice, that when a witneſs is produced, or a writing is offered in

evidence, the oppoſite party having a right to object to the evidence if he ſhould think it improper, requires to be informed what the witneſs is to prove, or to ſee the writing, before the firſt is examined, or the ſecond is read to the jury. The court has the ſame right, reſulting neceſſarily from its power to decide all queſtions relative to the admiſſibility of evidence. This right our courts are in the conſtant habit of exerciſing; not only when objections are made by the parties, but when there being no objection, the court itſelf has reaſon to ſuſpect that the teſtimony is improper. In moſt caſes, but not in all, conſent by the oppoſite party removes all objections to the admiſſibility of evidence, and courts ſometimes infer conſent from ſilence; but as it is their duty to take care, that no improper or illegal evidence goes to the jury, unleſs the objection to it be removed by conſent of parties; it is conſequently their duty, in all caſes where they ſee reaſon to ſuſpect that the evidence offered is improper, to aſcertain whether conſent has been given, or whether the ſeeming acquieſcence of the oppoſite party has proceeded from inattention. This is more particularly their duty in *criminal* caſes, where they are bound to be counſel for the government, as well as for the party accuſed.

It being thus the right and duty of a court before which a trial takes place, to inform itſelf of the nature of the evidence offered, ſo as to be able to judge whether ſuch evidence be proper, it reſults neceſſarily that they have a right to require, that any queſtion intended to be put to a witneſs, ſhould be reduced to writing, for that is the form in which their deliberation upon it may be moſt perfect, and their judgment will be moſt likely to be correct. In the caſe now under conſideration, the court did exerciſe this right. When the teſtimony of John Taylor was offered, the court inquired of the traverſer's counſel, what that witneſs was to prove. The ſtatement of his teſtimony given in anſwer, induced the court to ſuſpect that it was irrelevant and inadmiſſible. They, therefore, that they might have an opportunity for more careful and accurate conſideration, called upon the counſel to ſtate in writing, the queſtions intended to be put to the witneſs.

This

This is the act done by the court, but concurred in by the reſpondent, which has been ſelected and adduced, as one of the proofs and inſtances of "manifeſt injuſtice, partiality and intemperance" on his part. He owes an apology to this honorable court, for having occupied ſo much of its time with the refutation of a charge which has no claim to ſerious conſideration, except what it derives from the reſpect due to the honorable body by which it was made, and the high character of the court where it is preferred.

The next circumſtance ſtated by the article now under conſideration, as an inſtance and proof of "manifeſt injuſtice, partiality and intemperance" in this reſpondent, is his refuſal to poſtpone the trial of the ſaid James Thompſon Callender, "altho' an affidavit was regularly filed, ſtating the abſence of material witneſſes on behalf of the accuſed, and altho' it was manifeſt that with the utmoſt diligence the attendance of ſuch witneſſes could not have been procured at that term."

This reſpondent, in anſwer to this part of the charge, admits, that in the above mentioned trial the traverſer's counſel did move the court, while this reſpondent ſat in it alone, for a continuance of the caſe until the next term; not merely a poſtponement of the trial, as the expreſſions uſed in this part of the article would ſeem to import; and did file, as the ground work of their motion, an affidavit of the traverſer, a true and official copy of which, marked exhibit No. 5, this reſpondent herewith exhibits, and begs leave to make part of this anſwer; but he denies that any ſufficient ground for a continuance until the next term was diſcloſed by this affidavit, as he truſts will clearly appear from the following facts and obſervations.

The trial of an indictment at the term when it is found by the grand jury, is a matter of courſe, which the proſecutor can claim as a right, unleſs legal cauſe can be ſhewn for a continuance. The proſecutor may conſent to a continuance; but if he withholds his conſent, the court cannot grant a continuance without legal cauſe. Of the ſufficiency and legality of this cauſe, as of every other queſtion of law, the court muſt judge; but it muſt decide on this, as on every other point, according to the fixed and known rules of law.

One

One of the legal grounds, and the principal one on which ſuch a continuance may be granted, is the abſence of competent and *material* witneſſes, whom the party cannot produce at the preſent term, but has a *reaſonable ground* for expecting to be able to produce at the next term. Analagous to this, is the inability to procure at the preſent term, legal and *material* written teſtimony, which the party has a *reaſonable expectation* of being able to procure at the next term.

Theſe rules are as reaſonable and juſt in themſelves, as they are eſſential to the due adminiſtration of juſtice, to the puniſhment of offences on the one hand, and to the protection of innocence on the other. If the continuance of a cauſe, on the application of the party accuſed, were a matter of right, it is manifeſt that no indictment would be brought to trial until after a delay of many months. If, on the other hand, the granting of a continuance depended not on fixed rules, but on the arbitrary will of the court, it would follow that weakneſs or partiality might induce a court on ſome occaſions, to extend a very improper indulgence to the party accuſed; while on others, paſſion or prejudice might deprive him of the neceſſary means of making his defence. Hence the neceſſity of fixed rules, which the judges are bound to expound and apply, under the ſolemn ſanction of their oath of office.

The true and only reaſon for granting a continuance, is that the party accuſed may have the beſt opportunity that the laws can afford to him, to make his defence. But incompetent or immaterial witneſſes, could not be examined if they were preſent; and conſequently their abſence can deprive the party of no opportunity which the laws afford to him of making his defence. Hence the rule, that the witneſſes muſt be competent and material.

Public juſtice will not permit the trial of offenders to be delayed, on light or unfounded pretences. To wait for teſtimony which the party really wiſhed for, but did not expect to be able to produce within ſome definite period, would certainly be a very light pretence; and to make him the judge, how far there was reaſonable expectation of obtaining the teſtimony within the proper time, would put it in his power to delay the trial, on the moſt

moſt unfounded pretences. Hence the rule, that there muſt be reaſonable ground of expectation in the judgment of the court, that the teſtimony may be obtained within the proper time.

It is therefore a ſettled and moſt neceſſary rule, that every application for a continuance, on the ground of obtaining teſtimony, muſt be ſupported by an affidavit, diſcloſing ſufficient matter to ſatisfy the court, that the teſtimony wanted "is competent and material," and that there is "reaſonable expectation of procuring it within the time preſcribed." From a compariſon of the affidavit in queſtion with the indictment, it will ſoon appear how far the traverſer in this caſe, brought himſelf within this rule.

The abſent witneſſes mentioned in the affidavit, are William Gardner, of Portſmouth, in New Hampſhire; Tench Coxe, of Philadelphia, in Pennſylvania; Judge Bee, of ſome place in South Carolina; Timothy Pickering, lately of Philadelphia, in Pennſylvania, but of what place at that time, the deponent did not know; William B. Giles, of Amelia county, in the ſtate of Virginia; Stephens Thompſon Maſon, whoſe place of reſidence is not mentioned in the affidavit, but was known to be in Loudon county, in the ſtate of Virginia; and general Blackburn, of Bath county, in the ſaid ſtate. The affidavit alſo ſtates, that the traverſer wiſhed to procure, as material to his defence, authentic copies of certain anſwers made by the Preſident of the United States, Mr. Adams, to addreſſes from various perſons; and alſo, a book entitled "an Eſſay on Canon and Feudal Law," or entitled in words *to that purport*, which was aſcribed to the Preſident, and which the traverſer believed to have been written by him; and alſo, evidence to prove that the Preſident was in fact, the author of that book.

It is not ſtated, that the traverſer had any reaſonable ground to expect, or did expect, to procure this book or evidence, or theſe authentic copies, or the attendance of any one of theſe witneſſes, at the *next* term. Nor does he attempt to ſhew in what manner the book, or the copies of anſwers to addreſſes, were material, ſo as to enable the court to form a judgment on that point. Here then, the affidavit was clearly defective. His believing

lieving the book and copies to be material, was of no weight, unleſs he ſhewed to the court, ſufficient grounds for entertaining the ſame opinion. Moreover he does not ſtate, where he ſuppoſes that this book, and thoſe authentic copies, may be found: ſo as to enable the court to judge, how far a reaſonable expectation of obtaining them, might be entertained. On the ground of this book and theſe copies, therefore, there was no pretence for a continuance. As to the witneſſes, it is manifeſt, that, from their very diſtant and diſperſed ſituation, there exiſted no ground of reaſonable expectation, that their attendance could be procured at the *next* term, or at any ſubſequent time. Indeed, the idea of poſtponing the trial of an indictment, till witneſſes could be convened at Richmond, from South Carolina, New Hampſhire, and the weſtern extremities of Virginia, is too chimerical to be ſeriouſly entertained. Accordingly, the traverſer, though in his affidavit he ſtated them to be material, and declared that he could not procure their attendance at that term, could not venture to declare on oath, that he expected to procure it at the next, or at any other time; much leſs that he had any reaſonable ground for ſuch expectation. On this ground, therefore, the affidavit was clearly inſufficient; and it was conſequently the duty of the court to reject ſuch application.

But the teſtimony of theſe witneſſes, as ſtated in the affidavit, was wholly immaterial; and therefore, their abſence was no ground for a continuance, had there been reaſonable ground for expecting their attendance at the next term.

William Gardner and Tench Coxe, were to prove that Mr. Adams had turned them out of office, for their political opinions or conduct. This applied to that part of the publication, which conſtituted the matter of the third charge in the indictment, in theſe words, "the ſame ſyſtem of perſecution extended all over the continent. Every perſon holding an office, muſt either quit it, or think and vote exactly with Mr. Adams."—Judge Bee was to prove, that Mr. Adams had adviſed and requeſted him by letter, in the year 1799, to deliver Thomas Naſh, otherwiſe called Jonathan Robbins, to the Britiſh conſul in Charleſton. This might have had ſome application

application to the matter of the ſeventh charge; which alledged that "the hands of Mr. Adams were reeking with the blood of the poor, friendleſs, Connecticut ſailor." Timothy Pickering was to prove, that Mr. Adams, while Preſident, and while Congreſs was in ſeſſion, was many weeks in poſſeſſion of important diſpatches, from the American miniſter in France, without communicating them to Congreſs. This teſtimony was utterly immaterial; becauſe, admitting the fact to be ſo, Mr. Adams was not bound, in any reſpect, to communicate thoſe diſpatches to Congreſs, unleſs in his diſcretion, he ſhould think it neceſſary; and alſo, becauſe the fact, if true, had no relation to any part of the indictment. There are, indeed, three charges, on which it might at firſt ſight ſeem to have ſome ſlight bearing. Theſe are the eighth, the words furniſhing the matter of which are, "every feature in the adminiſtration of Mr. Adams, forms a diſtinct and additional evidence, that he was determined at all events, to embroil this country with France;" the fourteenth, the words ſtated in which alledge, that "by ſending theſe ambaſſadors to Paris, Mr. Adams and his Britiſh faction, deſigned to do nothing but miſchief;" and the eighteenth, the matter of which ſtates, "that in the midſt of ſuch a ſcene of profligacy and uſury, the Preſident perſiſted as long as he durſt, in making his utmoſt efforts, for provoking a French war." To no other charge in the indictment, had the evidence of Timothy Pickering, as ſtated in the affidavit, the remoteſt affinity. And ſurely, it will not be pretended by any man, who ſhall compare this evidence, with the three charges above mentioned, that the fact intended to be proved by it, furniſhed any evidence proper to go to a jury, in ſupport of either of thoſe charges, that "every feature of his adminiſtration, formed a diſtinct and additional evidence, of a determination at all events, to embroil this country with France," that "in ſending ambaſſadors to Paris, he intended nothing but miſchief," that "in the midſt of a ſcene of profligacy and uſury, he perſiſted, as long as he durſt, in making his utmoſt efforts for provoking a French war." Theſe are charges, which ſurely cannot be ſupported or juſtified, by the circumſtance of his keeping in his poſſeſſion, for ſeveral weeks, while Congreſs

greſs was in ſeſſion, diſpatches from the American miniſter in France, without communicating them to Congreſs,' which he was not bound to do, and which it was his duty not to do, if he ſuppoſed, that the communication, at an earlier period, would be injurious to the public intereſt. The teſtimony of William B. Giles and Stephens Thompſon Maſon, was to prove, that Mr. Adams had uttered in their hearing, certain ſentiments, favourable to ariſtocratic or monarchical principles of government.

This had no application except to a part of the twelfth charge; which has been already ſhewn to be wholly immaterial if taken ſeparately, and wholly incapable of a ſeparate juſtification, if conſidered as part of an entire charge. And, laſtly, it was to be proved by general Blackburn, that in his anſwer to an addreſs, Mr. Adams avowed, "that there was a party in Virginia, which deſerved to be humbled into duſt and aſhes, before the indignant frowns of their injured, inſulted and offended country." There were but two charges in the indictment to which this fact, if true, had the moſt diſtant reſemblance. Theſe are the fifteenth and ſixteenth, the words forming the matter of which, call Mr. Adams "an hoary-headed libeller of the governor of Virginia, who with all the fury, but without the propriety or ſublimity of Homer's Achilles, bawled out, to arms then, to arms!" and "who floating on the bladder of popularity, threatened to make Richmond the centre point of a bonfire." It would be an abuſe of the patience of this honorable court, to occupy any part of its time in proving, that the fact intended to be proved by general Blackburn, could not in the ſlighteſt degree ſupport or juſtify ſuch charges as theſe. This is the account given of the teſtimony of the abſent witneſſes, by the affidavit filed as the ground of the motion for a continuance. From a compariſon of it with the indictment, it will appear, that out of twenty charges in the indictment, there were but eight, to which any part of the teſtimony of theſe witneſſes had the moſt diſtant alluſion; and that of thoſe eight charges there are five, which the teſtimony, having ſome alluſions to them, could not in the ſlighteſt degree ſupport. Twelve charges therefore, remained without

even

even an attempt to juſtify them; and ſeventeen were wholly deſtitute of any legal or ſufficient juſtification. On theſe ſeventeen charges, therefore, the traverſer muſt have been convicted, even if the remaining three had been completely juſtified by the teſtimony of the abſent witneſſes. The conviction on theſe ſeventeen charges, or even on one of them, would have put it into the power of the court to fine and impriſon the traverſer, to the whole extent allowed by the law. If the truth of theſe three charges, admitting it to be eſtabliſhed, could have any effect in mitigating the puniſhment, which depended on the court and not on the jury, the court in paſſing ſentence might make, and in this caſe, actually did make, the fulleſt abatement on that account that the teſtimony if adduced would warrant.

This teſtimony, therefore, was in every view immaterial; and had it been material, there exiſted no ground of reaſonable expectation, that it could be obtained at the next term, or any future term. For theſe reaſons, and not from thoſe criminal motives, which without the leaſt ſhadow of proof are aſcribed to him, this reſpondent did overrule and reject the motion for a continuance till the next term: as it was his duty to do, ſince he had no diſcretion in the caſe, but was bound by the rules of law.

But in order to afford every accommodation to the traverſer and his counſel, which it was in his power to give, this reſpondent did offer to poſtpone the trial for a month or more, in order to afford them full time for preparation, and for procuring ſuch teſtimony as was within their reach. This indulgence they thought proper to refuſe.

On Monday, the ſecond, and Tueſday, the third day of June, 1800, when judge Griffin had taken his ſeat in court, and was on the bench, the counſel for the traverſer, renewed their motion for a continuance, founded on the ſame affidavit; and after a full hearing and conſideration of the argument, the court, judge Griffin concurring, overruled the motion, and ordered the trial to proceed.

If this deciſion be correct, as he believes and inſiſts that it is, no offence could be committed by him in mak-

ing or concurring in it. It was a proper and legal performance of his duty as a judge. If it be erroneous, ſtill the error, if an honeſt one, cannot be an offence, much leſs a high crime and miſdemeanor; and as in his colleague it has been conſidered as an honeſt error, he confidently truſts it will be conſidered ſo in him alſo.

To the third charge adduced in ſupport of the article now under conſideration, the charge of uſing "unuſual, rude, and contemptuous expreſſions, towards the priſoner's counſel," and of "falſely inſinuating, that they wiſhed to excite the public fears and indignation, and to produce that inſubordination to law, to which the conduct of this reſpondent did manifeſtly tend," he cannot anſwer otherwiſe than by a general denial. A charge ſo vague, admits not of preciſe or particular refutation. He denies that there was any thing unuſual or intentionally rude or contemptuous in his conduct or his expreſſions towards the priſoner's counſel; that he made any falſe inſinuation whatever againſt them, or that his own conduct tended in any manner to produce inſubordination to law. On the contrary, it was his wiſh and intention, to treat the counſel with the reſpect due to their ſituation and functions, and with the decorum due to his own character. He thought it his duty to reſtrain ſuch of their attempts as he conſidered improper, and to overrule motions made by them, which he conſidered as unfounded in law; but this it was his wiſh to accompliſh in the manner leaſt likely to offend, from which every conſideration concurred in diſſuading him. He did indeed think at that time, and ſtill remains under the impreſſion, that the conduct of the traverſer's counſel, whether from intention or not he will not undertake to ſay, was diſreſpectful, irritating, and highly incorrect. That conduct which he viewed in this light, might have produced ſome irritation in a temper naturally quick and warm, and that this irritation might notwithſtanding his endeavours to ſuppreſs it, have appeared in his manner and in his expreſſions, he thinks not improbable; for he has had occaſions of feeling and lamenting the want of ſufficient caution and ſelf-command, in things of this nature. But he confidently affirms, that his conduct in this particular was free from

intentional

intentional impropriety; and this reſpondent denies, that any part of his conduct was ſuch as ought to have induced the traverſer's counſel to "abandon the cauſe of their client," nor does he believe that any ſuch cauſe did induce them to take that ſtep. On the contrary, he believes that it was taken by them under the influence of paſſion or for ſome motive into which this reſpondent forbears at this time to inquire. And this reſpondent admits, that the ſaid traverſer was convicted and condemned to fine and impriſonment, but not by reaſon of the abandonment of his defence by his counſel; but becauſe the charges againſt him were clearly proved, and no defence was made or attempted againſt far the greater number of them.

The fourth charge in ſupport of this article, attributes to this reſpondent, "repeated and vexatious interruptions of the ſaid counſel, which at length induced them to abandon the cauſe of their client, who was therefore convicted, and condemned to fine and impriſonment." To this charge alſo, it is impoſſible to give any other anſwer but a general denial. He avers that he never interrupted the traverſer's counſel vexatiouſly, or except when he conſidered it his duty to do ſo. It cannot be denied that courts have power to interrupt counſel when in their opinion the correctneſs of proceeding requires it. In this, as in every thing elſe, they may err. They may ſometimes act under the influence of momentary paſſion or irritation, to which they in common with other men, are liable. But unleſs their conduct in ſuch caſes, though improper or ill-judged, be clearly ſhewn to proceed, not from human infirmity, but from improper motives, it cannot be imputed to them as an offence, much leſs as a crime or miſdemeanor.

Laſtly, this reſpondent is charged under this article, with an "indecent ſolicitude, manifeſted by him, for the conviction of the accuſed, unbecoming even a public proſecutor, but highly diſgraceful to the character of a judge, as it was ſubverſive of juſtice." This is another charge of which it is impoſſible to give a preciſe refutation, and to a general denial of which, this reſpondent muſt therefore confine himſelf. He denies that he felt any ſolicitude whatever for the conviction of the traverſer; other than

the

the general wiſh natural to every friend of truth, decorum, and virtue, that perſons guilty of ſuch offences, as that of which the traverſer ſtood indicted, ſhould be brought to puniſhment, for the ſake of example. He has no heſitation to acknowledge, that his indignation was ſtrongly excited, by the atrocious and profligate libel which the traverſer was charged with having written and publiſhed. This indignation, he believes, was felt by every virtuous and honorable man in the community, of every party, who had read the book in queſtion, or become acquainted with its contents. How properly it was felt, will appear from the book itſelf, which this reſpondent has ready to produce to this honorable court; from the parts of it incorporated into the indictment now under conſideration; and ſome further extracts contained in the paper marked exhibit No. 6, which this reſpondent prays leave to make part of this his anſwer. He admits, and it can never be to him a ſubject of ſelf-reproach or a cauſe of regret, that he partook largely in this general indignation, but he denies that it in any manner influenced his conduct towards the traverſer, which was regulated by a conſcientious regard to his duty and the laws. He moreover contends, that a ſolicitude to procure the conviction of the traverſer, however unbecoming his character as a judge, would not have been an offence, had he felt it; unleſs it had given riſe to ſome miſconduct on his part. Intentions and feelings, unleſs accompanied by actions, do not conſtitute crimes in this country; where the guilt or innocence of men is not judged of by their wiſhes and ſolicitudes, but by their conduct and its motives. And this reſpondent thinks it his duty, on this occaſion, to enter his ſolemn proteſt againſt the introduction in this country, of thoſe arbitrary principles, at once the offſpring and the inſtruments of deſpotiſm, which would make "high crimes and miſdemeanors" to conſiſt in "rude and contemptuous expreſſions," in "vexatious interruptions of counſel," and in the manifeſtation of "indecent ſolicitude" for the conviction of a moſt notorious offender. Such conduct is, no doubt, improper and unbecoming in any perſon, and much more ſo in a judge: but it is too vague, too uncertain, and too ſuſceptible of forced interpretations, according

according to the impulſe of paſſion or the views of poli-cy, to be admitted into the claſs of puniſhable offences, under a ſyſtem of law whoſe certainty and preciſion in the definition of crimes, is its greateſt glory, and the greateſt privilege of thoſe who live under its ſway.

In concluding his defence againſt thoſe charges contained in the fourth article of impeachment, he declares, that his whole conduct in that trial, was regulated by a ſtrict regard to the principles of law, and by an honeſt deſire to do juſtice between the United States and the party accuſed. He felt a ſincere wiſh, on the one hand, that the traverſer might eſtabliſh his innocence, by thoſe fair and ſufficient means which the law allows; and a determination, on the other, that he ſhould not, by ſubterfuges and frivolous pretences, ſport with the juſtice of the country, and evade that puniſhment of which, if guilty, he was ſo proper an object. Theſe intentions he is confident, were legal and laudable; and if, in any part of his conduct, he ſwerved from this line, it was an error of his judgment and not of his heart.

And the ſaid reſpondent for plea to the ſaid fourth article of impeachment, ſaith, that he is not guilty of any high crime and miſdemeanor, as in and by the ſaid fourth article is alledged againſt him, and this he prays, may be inquired of by this honorable court, in ſuch manner as law and juſtice ſhall ſeem to require.

The fifth article of impeachment charges this reſpondent, with having awarded "a capias againſt the body of the ſaid James Thompſon Callender, indicted for an offence *not capital*, whereupon the ſaid Callender was arreſted and committed to *cloſe* cuſtody, contrary to law in that caſe made and provided."

This charge is reſted, 1ſt, on the act of Congreſs of September 24th, 1789, entitled, "an act to eſtabliſh the judicial courts of the United States," by which it is enacted "that for any crime or offence againſt the United States, the offender may be arreſted, impriſoned, or bailed, agreeably to the uſual mode of proceſs, in the ſtate where ſuch offender may be found." And 2dly, on a law of the ſtate of Virginia, which is ſaid to provide "that upon *preſentment* by any grand jury, of an offence *not capital*, the court ſhall order the clerk to iſſue

a

a *ſummons* againſt the perſon or perſons ſo offending, to appear and anſwer ſuch preſentment at the *next* court." It is contended, in ſupport of this charge, that the act of Congreſs above mentioned, made the ſtate law the rule of proceeding, and that the ſtate law was violated by iſſuing a capias againſt Callender, inſtead of a ſummons.

The firſt obſervation to be made on this part of the caſe is, that the date of the law of Virginia is not mentioned in the article. A very material omiſſion! For it cannot be contended, that by the act of Congreſs in queſtion, which was paſſed for eſtabliſhing the laws of the United States, and regulating their proceedings; it was intended to render thoſe proceedings dependent on all *future* acts of the ſtate legiſlatures. The intention certainly was, to adopt, to a certain limited extent, the regulations exiſting in the ſtates at the time of paſſing the act. Conſequently, a law of Virginia, paſſed after this act, can have no operation on the proceedings under it. But by referring to the law of Virginia in queſtion, it will be found to bear date on November 13th, 1792, more than three years after this act of Congreſs, by which it is ſaid to have been adopted. But the omiſſion of the date of this law of Virginia, is not the moſt material overſight which has been made in citing it. Its title is "An act directing the method of proceeding againſt free perſons, charged with certain crimes," &c. and it enacts, ſection 28th, "That upon preſentment made by the grand jury, of an offence not capital, the court ſhall order the clerk to iſſue a ſummons, or *other proper proceſs*, againſt the perſon or perſons ſo preſented, to appear and anſwer at the next court." It will be obſerved that theſe words, "or other proper proceſs," which leave it perfectly in the diſcretion of the court what proceſs ſhall iſſue, provided it be ſuch as is proper for bringing the offender to anſwer to the preſentment, are omitted in this article of impeachment.

From theſe words it is perfectly manifeſt, that the law of Virginia, admitting it to apply, did not order a ſummons to be iſſued, but left it perfectly in the diſcretion of the court to iſſue a ſummons, or ſuch other proceſs as they ſhould judge proper. It is therefore, a ſufficient

ficient anſwer to this article to ſay, that this reſpondent conſidered a capias as the proper proceſs, and therefore ordered it to iſſue; which he admits that he did, immediately after the preſentment was found againſt the ſaid Callender, by the grand jury.

This he is informed and expects to prove, has been the conſtruction of this law by the courts of Virginia, and their general practice. Indeed it would be moſt ſtrange, if any other conſtruction or practice had been adopted. There are many offences not capital, which are of a very dangerous tendency, and on which very ſevere puniſhment is inflicted by the laws of Virginia; and to enact by law that in all ſuch caſes, however notorious or profligate the offenders might be, the courts ſhould be obliged, after a preſentment by a grand jury, to proceed againſt them by ſummons; would be to enact, that as ſoon as their guilt was rendered extremely probable, by the preſentment of a grand jury, they ſhould receive regular notice, to eſcape from puniſhment by flight or concealment.

It will alſo appear, as this reſpondent believes, by a reference to the laws and practice of Virginia, into which he has made all the inquiries which circumſtances and the ſhortneſs of time allowed him for preparing his anſwer, would permit, that all the caſes in which a ſummons is conſidered as the only proper proceſs, are caſes of petty offences, which on the preſentment of a grand jury, are to be tried by the court in a ſummary way, without the intervention of a petit jury.—Therefore, theſe proviſions had no appplication to the caſe of Callender, which could be no otherwiſe proceeded on than by indictment, and trial on the indictment by a petit jury.

It muſt be recollected that the act of Congreſs of September 24th, 1789, enacts, ſection 14, "that the courts of the United States, ſhall have power to iſſue writs of ſcire facias, habeas corpus, *and all other writs* not ſpecially provided for by ſtatute, which may be neceſſary for the exerciſe of their reſpective juriſdictions, and agreeable to the principles and uſages of laws." Conſequently, the circuit court, where the proceedings in queſtion took place, had power to iſſue a capias againſt the

the traverſer, on the preſentment, unleſs the ſtate law above mentioned governed the caſe, and contained ſomething to reſtrain the iſſuing of that writ in ſuch a caſe. This reſpondent contends, for the reaſons above ſtated, that this ſtate law neither applied to the caſe, nor contained any thing to prevent the iſſuing of a capias, if it had applied.

Thus it appears that this reſpondent, in ordering a capias to iſſue againſt Callender, decided correctly, as it certainly was his intention to do. But he claims no other merit than that of upright intention in this deciſion: for when he made the deciſion, he was utterly ignorant that ſuch a law exiſted in Virginia; and declares that he never heard of it, till this article was reported by a committee of the Houſe of Repreſentatives, during the preſent ſeſſion of Congreſs. This law was not mentioned on the trial either by the counſel or the traverſer, or by judge Griffin, who certainly had much better opportunities of knowing it than this reſpondent, and who, no doubt, would have cited it had they known it and conſidered it as applicable to the caſe. This reſpondent well knows that in a criminal view, ignorance of the law excuſes no man in offending againſt it; but this maxim applies not to the deciſion of a judge; in whom ignorance of the law in general would certainly be a diſqualification for this office, though not a crime; but ignorance of a particular act of aſſembly, of a ſtate where he was an utter ſtranger, muſt be conſidered as a very pardonable error; eſpecially as the counſel for the priſoner to whoſe caſe that law is ſuppoſed to have applied, forbore or omitted to cite it; and as a judge of the ſtate, always reſident in it, and long converſant with its local laws, either forgot this law, or conſidered it as inapplicable.

Such is the anſwer, which this reſpondent makes to the fifth article of impeachment. If he erred in this caſe, it was through ignorance of the law; and ſurely, ignorance under ſuch circumſtances, cannot be a crime, much leſs a high crime and miſdemeanor, for which he ought to be removed from his office. If a judge were impeachable for acting againſt law from ignorance only, it would follow, that he would be puniſhed in the ſame manner for

for deciding againſt law wilfully, and for deciding againſt it through miſtake. In other words, there would be no diſtinction between ignorance and deſign, between error and corruption.

And the ſaid reſpondent, for plea to the ſaid fifth article of impeachment, ſaith, that he is not guilty of any high crime and miſdemeanor, as in and by the ſaid fifth article is alledged againſt him; and this he prays, may be inquired of, by this honorable court, in ſuch manner, as law and juſtice ſhall ſeem to them to require.

The ſixth article of impeachment alledges, that this reſpondent, "with intent to oppreſs and procure the conviction of the ſaid James Thompſon Callender, did, at the court aforeſaid, rule and adjudge the ſaid Callender to trial, during the term at which he the ſaid Callender was preſented and indicted, contrary to the law in that caſe made and provided."

This charge alſo, is founded, 1ſt, on the act of Congreſs of September 24th, 1789, above mentioned, which enacts, ſection 34, "that the laws of the ſeveral ſtates, except where the conſtitution, treaties or ſtatutes of the United States ſhall otherwiſe provide, ſhall be regarded as the rules of deciſion, in trials at *common law*, in the courts of the United States, in caſes where they apply;" and 2dly, on a law of the ſtate of Virginia, which is ſuppoſed to provide, "that in caſes not capital, the offender ſhall not be held to anſwer any preſentment of a grand jury, until the court next ſucceeding that, during which ſuch preſentment ſhall have been made." This law, it is contended, is made the rule of deciſion by the above mentioned act of Congreſs, and was violated by the refuſal to continue the caſe of Callender till the next term.

In anſwer to this charge this reſpondent declares, that he was at the time of making the above mentioned deciſion, wholly ignorant of any ſuch law of Virginia as that in queſtion; that no ſuch law was adduced or mentioned by the counſel of Callender, in ſupport of their motion for a continuance, neither when they firſt made it, before this reſpondent ſitting alone, nor when they renewed it, after Judge Griffin had taken his ſeat in court: that no ſuch law was mentioned by Judge Griffin; who concurred in overruling the motion for a con-

inſtance, and ordering on the trial; which he could not have done had he known that ſuch a law exiſted, or conſidered it as applicable to the caſe; and that this reſpondent never heard of any ſuch law, until the articles of impeachment now under conſideration were reported, in the courſe of the preſent ſeſſion of Congreſs, by a committee of the Houſe of Repreſentatives.

A judge is certainly bound to uſe all proper and reaſonable means of obtaining a knowledge of the laws which he is appointed to adminiſter; but after the uſe of ſuch means, to overlook, miſunderſtand, or remain ignorant of ſome particular law, is at all times a very pardonable error. It is much more ſo in the caſe of a judge of the ſupreme court of the United States, holding a circuit court in a particular ſtate, with which he is a ſtranger, and with the local laws of which he can have enjoyed but very imperfect opportunities of becoming acquainted. It was foreſeen by Congreſs, in eſtabliſhing the circuit courts of the United States, that difficulties and inconveniences muſt frequently ariſe from this ſource, and to obviate ſuch difficulties it was provided, that the diſtrict judge of each ſtate, who having been a reſident of the ſtate and a practitioner in its courts, had all the neceſſary means of becoming acquainted with its local laws, ſhould form a part of the circuit court in his own ſtate. The judge of the ſupreme court is expected, with reaſon, to be well verſed in the general laws; but the local laws of the ſtate form the peculiar province of the diſtrict judge, who may be juſtly conſidered as particularly reſponſible for their due obſervance. If in the caſe in queſtion, this reſpondent overlooked or miſconſtrued any local law of the ſtate of Virginia, which ought to have governed the caſe, it was equally overlooked and miſunderſtood, not only by the priſoner's counſel who made the motion, and whoſe peculiar duty it was to know the law and bring it into the view of the court, but alſo by the diſtrict judge, who had the beſt opportunities of knowing and underſtanding it, and in whom, nevertheleſs, this overſight or miſtake is conſidered as a venial error, while in this reſpondent it is made the ground of a criminal charge.

This reſpondent further ſtates, that after the moſt diligent

diligent and the moſt extenſive inquiry which the time allowed for preparing this anſwer would permit, he can find no law of Virginia which expreſsly enacts, that "in caſes not capital, the offender ſhall not be held to anſwer any preſentment of a grand jury, until the court next ſucceeding that during which ſuch preſentment ſhall have been made." This principle he ſuppoſes to be an inference drawn by the authors of the articles of impeachment, from the law of Virginia mentioned in the anſwer to the preceding article, the law of November 15th, 1792, which provides "that upon preſentment made by the grand jury of an offence not capital, the court ſhall order the clerk to iſſue a ſummons, or other proper proceſs, againſt the perſon or perſons ſo preſented, to appear and anſwer ſuch preſentment at the NEXT court." This law he conceives does not warrant the inference ſo drawn from it, becauſe it ſpeaks of *preſentments* and not of *indictments*, which are very different things; and is, as he is informed, confined by practice and conſtruction in the ſtate of Virginia, to caſes of ſmall offences, which are to be tried by the court itſelf upon the preſentment, without an indictment or the intervention of a petit jury. But for caſes, like that of Callender, where an indictment muſt follow the preſentment, this law made no proviſion. Further, the ſtate laws are directed by the abovementioned act of Congreſs, to be the rule of deciſion in the courts of the United States, only "in caſes where they apply." Whether they apply or not to a particular caſe, is a queſtion of law, to be decided by the court where ſuch caſe is pending, and an error in making the deciſion is not a crime, nor even an offence, unleſs it can be ſhewn to have proceeded from improper motives. This reſpondent is of opinion, that the law in queſtion did not apply to the caſe of Callender, for the reaſons ſtated above; and therefore that it would have been his duty to diſregard it, even had it been made known to him by the counſel for the traverſer.

And in the laſt place he contends, that the law of Virginia in queſtion, is not adopted by the abovementioned act of Congreſs as the rule of deciſion, in ſuch caſes as that now under conſideration. That act does indeed provide, "that the laws of the ſeveral ſtates, except

cept where the conſtitution, treaties or ſtatutes of the United States ſhall otherwiſe provide, ſhall be regarded as rules of deciſion in trials at *common law*, in the courts of the United States, in caſes where they apply." But this proviſion, in his opinion, can relate only to rights acquired under the ſtate laws, which come into queſtion *on* the trial; and not to forms of proceſs or modes of proceeding, anterior or preparatory to the trial. Nor can it, as this reſpondent apprehends, have any application to indictments for offences againſt the ſtatutes of the United States, which cannot with any propriety be called "trials at common law." It relates merely, in his opinion, to civil rights acquired under the ſtate laws; which by virtue of this proviſion are, when they come in queſtion in the courts of the United States, to be governed by the laws under which they accrued.

If in theſe opinions this reſpondent be incorrect, it is an honeſt error: and he contends that neither ſuch an error in the conſtruction of a law, nor his ignorance of a local ſtate law which he had no opportunity of knowing, and of which the counſel for the party whoſe caſe it is ſuppoſed to have affected were equally ignorant, can be conſidered as an offence liable to impeachment, or to any ſort of puniſhment or blame.

And for plea to the ſaid ſixth article of impeachment, the ſaid Samuel Chaſe ſaith, that he is not guilty of any high crime or miſdemeanor as in and by the ſaid article is alledged againſt him; and this he prays may be inquired of by this honorable court in ſuch manner as law and juſtice ſhall ſeem to them to require.

The ſeventh article of impeachment relates to ſome conduct of this reſpondent in his judicial capacity, at a circuit court of the United States held at Newcaſtle in the ſtate of Delaware, in June 1800. The ſtatement of this conduct made in the article is altogether erroneous; but if it were true, this reſpondent denies, that it contains any matter for which he is liable to impeachment. It alledges that "diſregarding the duties of his office, he did deſcend from the dignity of a judge, and ſtoop to the level of an informer." This high offence conſiſted, according to the article, 1ſt, in refuſing to diſcharge the grand jury, although entreated by ſeveral of the ſaid jury

to

to do ſo;" 2dly, in "observing to the ſaid grand jury, after the ſaid grand jury had regularly declared through their foreman, that they had found no bills of indictment, and had no preſentments to make, that he the ſaid Samuel Chaſe underſtood 'that a highly ſeditious temper had manifeſted itſelf in the ſtate of Delaware, among a certain claſs of people, particularly in Newcaſtle county, and more eſpecially in the town of Wilmington, where lived a moſt ſeditious printer, unreſtrained by any principle of virtue, and regardleſs of ſocial order; that the name of this printer was ——————" 3dly, "in then checking himſelf as if ſenſible of the indecorum which he was committing;" 4thly, in adding "that it might be aſſuming too much, to mention the name of this perſon; but it becomes your duty, gentlemen, to inquire diligently into this matter," or words to that effect." And 5thly, in authoritatively enjoining on the diſtrict attorney of the United States, with intention to procure the proſecution of the printer in queſtion, the neceſſity of procuring a file of the papers to which he alluded, and by a ſtrict examination of them to find ſome paſſage, which might furniſh the ground work of a proſecution against the printer."

Theſe charges amount in ſubſtance to this; that the reſpondent refuſed to diſcharge a grand jury on their requeſt, which is every day's practice, and which he was bound to do, if he believed that the due adminiſtration of juſtice required their longer attendance: that he directed the attention of the grand jury to an offence againſt a ſtatute of the United States, which he had been informed was committed in the Diſtrict; and that he deſired the diſtrict attorney to aid the grand jury, in their inquiries concerning the exiſtence and nature of this offence. By theſe three acts, each of which it was his duty to perform, he is alledged "to have degraded his high judicial functions, and tended to impair the public confidence in, and reſpect for, the tribunals of juſtice, ſo eſſential to the general welfare."

That this honorable court may be able to form correctly its judgment, concerning the tranſaction mentioned in this article, this reſpondent ſubmits the following ſtatement of it, which he avers to be true, and expects to prove.

On

On the 27th day of June, 1800, this reſpondent, as one of the aſſociate juſtices of the ſupreme court of the United States, preſided in the circuit court of the United States, then held at Newcaſtle in and for the diſtrict of Delaware, and was aſſiſted by Gunning Bedford, Eſq. then diſtrict judge of the United States for that diſtrict. At the opening of the court on that day, this reſpondent according to his duty and his uniform practice, delivered a charge to the grand jury in which he gave in charge to them ſeveral ſtatutes of the United States, and among others, an act of Congreſs paſſed July 14th, 1798, entitled "An act in addition to an act for the puniſhment of certain crimes againſt the United States," and commonly called the "ſedition law." He directed them to inquire concerning any breaches of thoſe ſtatutes, and eſpecially of that commonly called the ſedition law, within the diſtrict of Delaware.

On the ſame day before the uſual hour of adjournment, the grand jury came into court, and informed the court that they had found no indictment or preſentment, and had no buſineſs before them, for which reaſon they wiſhed to be diſcharged. This reſpondent replied, that it was earlier than the uſual hour of diſcharging a grand jury; and that buſineſs might occur during the ſitting of the court. He alſo aſked them if they had no information of publications within the diſtrict, that came under the ſedition law, and added, that he had been informed, that there was a paper called the "Mirror," publiſhed at Wilmington, which contained libellous charges againſt the government and Preſident of the United States: that he had not ſeen that paper, but it was their duty to inquire into the ſubject; and if they had not turned their attention to it, the attorney for the diſtrict would be pleaſed to examine a file of that paper, and if he found any thing that came within the ſedition law, would lay it before them." This is the ſubſtance of what the reſpondent ſaid to the grand jury on that occaſion, and he believes nearly his words. On the morning of the *next day*, they came into court and declared that they had no preſentments to make, on which they were immediately diſcharged. The whole time therefore, for which they were detained, was twenty-four hours,

hours, far leſs than is generally required of grand juries.

In theſe proceedings, this reſpondent acted according to his ſenſe of what the duties of his office required. It certainly was his duty to give in charge to the grand jury, all ſuch ſtatutes of the United States as provided for the puniſhment of offences, and among others, that called the ſedition act; into all offences againſt which act, while it continued in force, the grand jury were bound by their oaths to inquire. In giving it in charge, together with the other acts of Congreſs for the puniſhment of offences, he followed moreover the example of the other judges of the ſupreme court, in holding their reſpective circuit courts. He alſo contends, and did then believe, that it was his duty, when informed of an offence, which the grand jury had overlooked, to direct their attention towards it, and to requeſt for them, and even to require if neceſſary, the aid of the diſtrict attorney in making their inquiries. In thus diſcharging what he conceives to be his duty, even if he committed an error in ſo conſidering it, he denies that he committed or could commit any offence whatever.

With reſpect to the remarks which he is charged by this article with having made to the grand jury, relative to "a highly ſeditious temper, which he had underſtood to have manifeſted itſelf in the ſtate of Delaware, among a certain claſs of people, particularly in Newcaſtle county, and more eſpecially in the town of Wilmington," and relative to "a moſt ſeditious printer, reſiding in Wilmington, unreſtrained by any principle of virtue, and regardleſs of ſocial order;" this reſpondent does not recollect or believe, that he made any ſuch obſervations. But if he did make them, it could not be improper in him to tell the jury that he had received ſuch information, if in fact he had received it; which was probably the caſe, though he cannot recollect it with certainty at this diſtance of time. That this information, if he did receive it, was correct, ſo far, as it regarded the printer in queſtion, will fully appear from a file of the paper called the "Mirror of the Times," &c. publiſhed at Wilmington, Delaware, from February 5th, to March 19th, 1800, incluſive, which he has lately obtained, and is ready to produce to this honorable court when neceſ-

ſary,

ſary, and ſome extracts from which are contained in the exhibits ſeverally marked No. 7, which he prays leave to make part of this his anſwer.

And for plea to the ſaid ſeventh article of impeachment, the ſaid Samuel Chaſe ſaith, that he is not guilty of any high crime or miſdemeanor, as in and by the ſaid ſeventh article is alledged againſt him, and this he prays may be inquired of by this honorable court, in ſuch manner as law and juſtice ſhall ſeem to them to require.

The eighth article of impeachment charges, that this reſpondent, "diſregarding the duties and dignity of his official character, did, at a circuit court for the diſtrict of Maryland, held at Baltimore, in the month of May, 1803, pervert his official right and duty to addreſs the grand jury then and there aſſembled, on the matters coming within the province of the ſaid jury, for the purpoſe of delivering to the ſaid grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and reſentment of the ſaid grand jury, and of the good people of Maryland, againſt their ſtate government and conſtitution," and alſo that this reſpondent, "under pretence of exerciſing his judicial right to addreſs the grand jury as aforeſaid, did endeavor to excite the odium of the ſaid grand jury, and of the good people of Maryland, againſt the government of the United States, by delivering opinions which were, at that time and as delivered by him, highly indecent, extrajudicial, and tending to proſtitute the high judicial character with which he was inveſted, to the low purpoſe of an electioneering partizin."

In anſwer to this charge this reſpondent admits, that he did, as one of the aſſociate juſtices of the ſupreme court of the United States, preſide in a circuit court held at Baltimore in and for the diſtrict of Maryland, in May 1803, and did then deliver a charge to the grand jury, and expreſs in the concluſion of it ſome opinions as to certain public meaſures, both of the government of Maryland and of that of the United States. But he denies that in thus acting, he diſregarded the duties and dignity of his judicial character, perverted his official right and duty to addreſs the grand jury, or had

any

any intention to excite the fears or reſentment of any perſon whatever, againſt the government and conſtitution of the United States or of Maryland. He denies that the ſentiments which he thus expreſſed, were "intemperate and inflammatory," either in themſelves or in the manner of delivering; that he did endeavour to excite the odium of any perſon whatever againſt the government of the United States, or did deliver any opinions which were in any reſpect indecent, or which had any tendency to proſtitute his judicial character, to any low or improper purpoſe. He denies that he did any thing that was unuſual, improper or unbecoming in a judge, or expreſſed any opinions, but ſuch as a friend to his country, and a firm ſupporter of the governments both of the ſtate of Maryland and of the United States might entertain. For the truth of what he here ſays, he appeals confidently to the charge itſelf; which was read from a written paper now in his poſſeſſion, ready to be produced. A true copy of all ſuch parts of this paper as relate to the ſubject matter of this article of impeachment, is contained in the exhibit marked No. 8, which he prays leave to make part of this his anſwer. That part of it which relates to the article now under conſideration is in theſe words: "You know, gentlemen, that our ſtate and national inſtitutions were framed to ſecure to every member of the ſociety *equal* liberty and *equal* rights; but the late alteration of the federal judiciary, by the abolition of the office of the ſixteen circuit judges, and the *recent* change in our ſtate conſtitution by the eſtabliſhing *univerſal* ſuffrage, *and* the further alteration that is contemplated in our ſtate judiciary, (if adopted) will in my judgment take away *all ſecurity for property and perſonal liberty*. The independence of the national judiciary is already ſhaken to its foundation; and the virtue of the people alone can reſtore it. The independence of the judges of this ſtate will be entirely deſtroyed, if the bill for the aboliſhing the two ſupreme courts, ſhould be ratified by the next general aſſembly. The change of the ſtate conſtitution by allowing univerſal ſuffrage, will in my opinion certainly and rapidly deſtroy all protection to property, and all ſecurity to perſonal liberty; and our republican conſtitution will ſink into a *mobocracy*, the worſt of all poſſible governments. "I

"I can only lament that the *main pillar* of our ſtate conſtitution has been thrown down, by the eſtabliſhment of *univerſal ſuffrage*. By this ſhock *alone*, the whole building totters to its baſe, and will crumble into ruins before *many* years elapſe, unleſs it be *reſtored* to its original ſtate. If the independency of your ſtate judges, which your bill of rights wiſely declares 'to be eſſential to the impartial adminiſtration of juſtice, and the great ſecurity to the rights and liberties of the people,' ſhall be taken away, by the ratification of the bill paſſed for that purpoſe, it will precipitate the deſtruction of your whole ſtate conſtitution, and there will be nothing left in it, worthy the care or ſupport of freemen."

Admitting theſe opinions to have been incorrect and unfounded, this reſpondent denies that there was any law which forbid him to expreſs them, in a charge to a grand jury; and he contends that there can be no offence, without the breach of ſome law. The very eſſence of deſpotiſm conſiſts, in puniſhing acts which, at the time when they were done, were forbidden by no law. Admitting the expreſſion of political opinions by a judge, in his charge to a jury, to be improper and dangerous; there are many improper and very dangerous acts, which not being forbidden by law cannot be puniſhed. Hence the neceſſity of new penal laws; which are from time to time enacted for the prevention of acts not before forbidden, but found by experience to be of dangerous tendency. It has been the practice in this country, ever ſince the beginning of the revolution, which ſeparated us from Great Britain, for the judges to expreſs from the bench, by way of charge to the grand jury, and to enforce to the utmoſt of their ability, ſuch political opinions as they thought correct and uſeful. There have been inſtances in which the legiſlative bodies of this country have recommended this practice to the judges; and it was adopted by the judges of the ſupreme court of the United States, as ſoon as the preſent judicial ſyſtem was eſtabliſhed. If the legiſlature of the United States conſidered this practice as miſchievous, dangerous or liable to abuſe, they might have forbidden it by law; to the penalties of which, ſuch judges as might afterwards tranſgreſs it, would be juſtly ſubjected. By not forbidding it, the

the legiſlature has given to it an implied ſanction; and for that legiſlature to puniſh it now by way of impeachment, would be to convert into a crime, by an ex poſt facto proceeding, an act which when it was done and at all times before, they had themſelves virtually declared to be innocent. Such conduct would be utterly ſubverſive of the fundamental principles on which free government reſts; and would form a precedent for the moſt ſanguinary and arbitrary perſecutions, under the forms of law.

Nor can the incorrectneſs of the political opinions thus expreſſed, have any influence in deciding on the guilt or innocence of a judge's conduct in expreſſing them. For if he ſhould be conſidered as guilty or innocent, according to the ſuppoſed correctneſs or incorrectneſs of the opinion, thus expreſſed by him, it would follow, that error in political opinion, however honeſtly entertained, might be a crime; and that a party in power might, under this pretext, deſtroy any judge, who might happen in a charge to a grand jury, to ſay ſomething capable of being conſtrued by them, into a political opinion adverſe to their own ſyſtem.

There might be ſome pretence for ſaying, that for a judge to utter ſeditious ſentiments, with intent to excite ſedition, would be an impeachable offence: although ſuch a doctrine would be liable to the moſt dangerous abuſes; and is hoſtile to the fundamental principles of our conſtitution, and to the beſt eſtabliſhed maxims of our criminal juriſprudence. But admitting this doctrine to be correct, it cannot be denied that the ſeditious intention muſt be proved clearly, either by the moſt neceſſary implication from the words themſelves, or by ſome overt acts of a ſeditious nature connected with them. In the preſent caſe no ſuch acts are alledged, but the proof of a ſeditious intent muſt reſt on the words themſelves. By this rule this reſpondent is willing to be judged. Let the opinions which he delivered be examined; and if the members of this honorable court can lay their hands on their hearts, in the preſence of God, and ſay 'that theſe opinions are not only erroneous but ſeditious alſo; and carry with them internal evidence of an intention in this reſpondent to excite

ſedition,

ſedition, either againſt the ſtate or general government, he is content to be found guilty.

In making this examination, let it be borne in mind, that to oppoſe a depending meaſure, by endeavoring to convince the public that it is improper, and ought not to be adopted; or to promote the repeal of a law already paſt, by endeavoring to convince the public that it ought to be repealed, and that ſuch men ought to be elected to the legiſlature as will repeal it; to attempt in fine, the correction of public meaſures, by arguments tending to ſhew their improper nature, or deſtructive tendency; never has been or can be conſidered as ſedition, in any country, where the principles of law and liberty are reſpected; but is the proper and uſual exerciſe of that right of opinion and ſpeech, which conſtitutes the diſtinguiſhing feature of free government. The abuſe of this privilege, by writing and publiſhing as facts, malicious falſehoods, with intent to defame, is puniſhable as libellous, in the courts having juriſdiction of ſuch offences; where the truth or falſehood of the facts alledged, and the malice or correctneſs of the intention, form the criterion of guilt and innocence. But the character of libellous, much leſs of ſeditious, has never been applied to the expreſſion of opinions concerning the tendency of public meaſures, or to arguments urged for the purpoſe of oppoſing them, or of effecting their repeal. To apply the doctrine of ſedition or of libels to ſuch caſes, would inſtantly deſtroy all liberty of ſpeech, ſubvert the main pillars of free government, and convert the tribunals of juſtice into engines of party vengeance. To condemn a public meaſure, therefore, as pernicious in its tendency; to uſe arguments for proving it to be ſo; and to endeavor by theſe means to prevent its adoption, if ſtill depending, or to procure its repeal in a regular and conſtitutional way, if it be already adopted; can never be conſidered as ſedition, or in any way illegal.

The firſt opinion expreſſed to the grand jury on the occaſion in queſtion, by this reſpondent, was that "the late alteration of the federal judiciary, by the abolition of the office of the ſixteen circuit judges; and the recent change in our ſtate conſtitution, by eſtabliſhing univerſal

univerſal ſuffrage; and the further alteration that was then contemplated in our ſtate judiciary, if adopted;" would, in the judgment of this reſpondent, "take away all ſecurity for property and perſonal liberty." That is, "theſe three meaſures, if the laſt of them, which is ſtill depending, ſhould be adopted, will, in my opinion, form a ſyſtem whoſe pernicious tendency muſt be, to take away the ſecurity for our property and our perſonal liberty," which we have hitherto derived from the ſalutary reſtrictions, laid by the authors of our conſtitution on the right of ſuffrage, and from the preſent conſtitution of our courts of juſtice." What is this but an argument to perſuade the people of Maryland to reject the alterations in their ſtate judiciary which were then propoſed; which this reſpondent as a citizen of that ſtate had a right to oppoſe; and the adoption of which depended on a legiſlature then to be choſen? If this be ſedition, then will it be impoſſible to expreſs an opinion oppoſite to the views of the ruling party of the moment, or to oppoſe any of their meaſures by argument, without becoming ſubject to ſuch puniſhment as they may think proper to inflict.

The next opinion is, that "the independence of the national judiciary was already ſhaken to its foundation, and that the virtue of the people alone could reſtore it." In other words, "The act of Congreſs for repealing the late circuit court law, and vacating thereby the offices of the judges, has ſhaken to its foundation the independence of the national judiciary, and nothing but a change in the repreſentation of Congreſs, which the return of the people to correct ſentiments alone can effect, will be ſufficient to produce a repeal of this act, and thereby reſtore to its former vigor, the part of the federal conſtitution, which has been thus impaired."

This is the obvious meaning of the expreſſion; and it amounts to nothing more than an argument in favor of that change, which this reſpondent then thought and ſtill thinks to be very deſirable; an argument the force of which as a patriot he might feel, and which as a free man he had a right to advance.

The next opinion is, that "the independence of the judges of the ſtate of Maryland, would be entirely deſtroyed

634245

ſtroyed if the bill for aboliſhing the two ſupreme courts ſhould be ratified by the next general aſſembly." This opinion, however incorrect it may be, ſeems to have been adopted by the people of Maryland, to whom this argument againſt the bill in queſtion was addreſſed: for at the next ſeſſion of the legiſlature this bill, which went to change entirely the conſtitutional tenure of judicial office in the ſtate, and to render the ſubſiſtence of the judges dependent on the legiſlature, and their continuance in office on the executive, was abandoned by common conſent.

All the other opinions expreſſed by this reſpondent, as above mentioned, bear the ſame character with thoſe already conſidered. They are arguments addreſſed to the people of Maryland, for the purpoſe of diſſuading them from the adoption of a meaſure then depending; and of inducing them, if poſſible, to reſtore to its original ſtate, that part of their conſtitution relating to the right of ſuffrage, by a repeal of the law, which had been made for its alteration.

Such were the objects of this reſpondent in delivering thoſe opinions, and he contends that they were fair, proper, and legal objects, and that he had a right to purſue them in this way: a right ſanctioned by the univerſal practice of this country, and by the acquieſcence of its various legiſlative authorities. Such, he contends, is the true and obvious meaning of the opinions which he delivered, and which he believes to be correct. It is not now neceſſary to inquire into their correctneſs; but, if incorrect, he denies that they contain any thing ſeditious, or any evidence of thoſe improper intentions which are imputed to him by this article of impeachment. He denies that in delivering them to the grand jury, he committed any offence, infringed any law, or did any thing unuſual or heretofore conſidered in this country as improper or unbecoming in a judge. If this article of impeachment can be ſuſtained on theſe grounds, the liberty of ſpeech on national concerns, and the tenure of the judicial office under the government of the United States, muſt hereafter depend on the arbitrary will of the Houſe of Repreſentatives and the Senate, to be declared on impeachment, after the acts are done, which it may at any time

time be thought neceſſary to treat as high crimes and misdemeanors.

And the ſaid Samuel Chaſe, for plea to the ſaid eighth article of impeachment, ſaith, that he is not guilty of any high crime and miſdemeanor, as in and by the ſaid eighth article is alledged againſt him, and this he prays may be inquired of by this honorable court, in ſuch manner as law and juſtice ſhall ſeem to them to require.

This reſpondent has now laid before this honorable court, as well as the time allowed him would permit, all the circumſtances of his caſe, with an humble truſt in Providence, and a conſciouſneſs that he has diſcharged all his *official* duties with juſtice and impartiality, to the beſt of his knowledge and abilities; and, that intentionally he hath committed no crime or miſdemeanor, or any violation of the conſtitution or laws of his country. Confiding in the impartiality, independence and integrity of his judges, and that they will patiently hear, and conſcientiouſly determine this caſe, without being influenced by the ſpirit of party, by popular prejudice, or political motives, he cheerfully ſubmits himſelf to their deciſion.

If it ſhall appear to this honorable court, from the evidence produced, that he hath acted in his *judicial* character with wilful injuſtice or partiality, he doth not wiſh any favor; but expects that the whole extent of the puniſhment permitted in the conſtitution will be inflicted upon him.

If any part of his official conduct ſhall appear to this honorable court, *ſtricti juris*, to have been *illegal*, or to have proceeded from *ignorance* or *error* in judgment; or if any part of his conduct ſhall appear, although not illegal, to have been irregular or improper, but not to have flown from a depravity of heart, or any unworthy motive, he feels confident that this court will make allowance for the imperfections and frailties incidental to man.

He is ſatisfied, that every member of this tribunal will obſerve the principles of humanity and juſtice, and will preſume him innocent, until his guilt ſhall be eſtabliſhed by legal and credible witneſſes, and will be governed in his deciſion, by the moral and Chriſtian rule of rendering

rendering that juſtice to this reſpondent, which he would wish to receive.

This reſpondent now ſtands not merely before an earthly tribunal, but alſo before that Awful Being whoſe preſence fills all ſpace, and whoſe all ſeeing eye more eſpecially ſurveys the temples of juſtice and religion. In a little time, his accuſers, his judges, and himſelf, muſt appear at the bar of Omnipotence, where the ſecrets of all hearts ſhall be diſcloſed, and every human being ſhall anſwer for his deeds done in the body, and ſhall be compelled to give evidence againſt himſelf in the preſence of aſſembled univerſe. To his Omniſcient Judge, at that awful hour, he now appeals for the rectitude and purity of his conduct, as to all the matters of which he is this day accuſed.

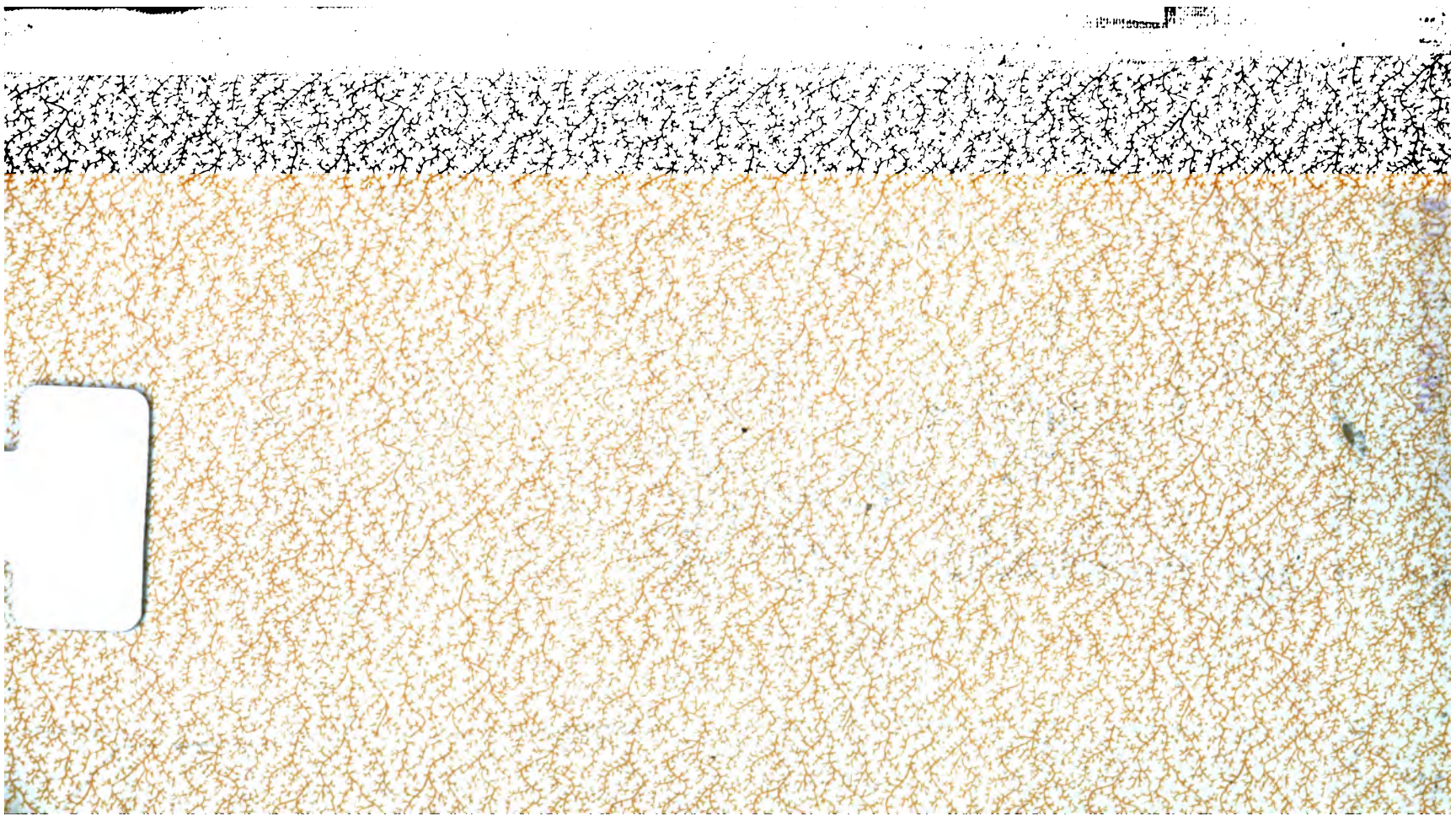
He hath now only to adjure each member of this honorable court, by the living GOD, and in his holy name, to render impartial juſtice to him, according to the conſtitution and laws of the United States. He makes this ſolemn demand of each member, by all his hopes of happineſs in the world to come, which he will have voluntarily renounced by the oath he has taken, if he ſhall wilfully do this reſpondent injuſtice, or diſregard the conſtitution or laws of the United States, which he has ſolemnly ſworn to make the rule and ſtandard of his judgment and deciſion.

SAMUEL CHASE.

A true copy,

ATTEST. SAMUEL A. OTIS, *Secretary.*

THE NEW YORK PUBLIC LIBRARY
REFERENCE DEPARTMENT

This book is under no circumstances to be taken from the Building

form 410